

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. H206962 & H206963

JAMES G. GODWIN,  
EMPLOYEE

CLAIMANT

MID SOUTH MILLING COMPANY, INC.,  
EMPLOYER

RESPONDENT

TRAVELERS INDEMNITY COMPANY,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED FEBRUARY 8, 2024

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

Claimant represented by the HONORABLE JARID M. KINDER, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed July 20, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained compensable scheduled injuries on August 5, 2022 and September 2, 2022. We find that the claimant proved he was entitled to temporary total disability benefits beginning September 23, 2022 and continuing until December 8, 2022.

I. HISTORY

James Godwin, now age 55, testified that he became employed with the respondents, Mid-South Milling Company, in February 2019. The parties stipulated that the employee-employer-carrier relationship existed on August 5, 2022. The claimant testified on direct examination:

Q. And what all did you do for Mid-South?

A. Mixing room operator and for a short time a front end loader operator.

Q. Now, for the purpose of why we are here, what job were you doing whenever the injury occurred?

A. Mixing room operator....

Q. Well, let's go to why we are here today, which is actually that injury, and it is my understanding that you had a lower extremity injury to the right side on August 5<sup>th</sup>. Is that correct?

A. Yes.

Q. What happened?

A. The equipment had choked down and after we unchoked, I believe it was a hammer mill, you turn the equipment on backwards to where it starts. From there after, wherever the material is going, one piece of equipment at a time. I would run back and forth to the door and, you know, make sure there is nothing squealing and everything is running. And I hit a switch, turn on the one particular screw and I got to the door. The belts are squealing, you know, it was still choked up. So I turn around and, you know, try to get back to the switch as soon as I could, but the first step I took on my right foot, you know, I felt something give. I fell to the floor and that day I found out it was a partial tear to my Achilles tendon....

Q. So were you sitting down before this incident occurred or were you standing?

A. I was standing.

Q. Okay. And you turned to run to shut a piece of machinery down. Is that my understanding?

A. Yes.

Q. Okay. And how fast were you going whenever you were going to shut this piece of machinery down?

A. It was like the first or second step. You know, kind of like you are in a hurry. You've got to get there now. So I pivoted

and put all of my weight on my right foot and that is when it happened.

Q. Were you in a hurry at this point?

A. Yes.

Q. Why were you in a hurry?

A. To shut the equipment down....

Q. Could you walk at that point?

A. No. It was five to 10 minutes before I could get up.

Q. So after these five to 10 minutes go by, what did you do?

A. I went to Ben Smith's office. I told him what happened.

Told him I was going to the hospital.

Q. Did you immediately go to the hospital that day?

A. Yes.

Benjamin Glen Smith testified that he was the respondent-employer's Operations and Plant Manager. The respondents' attorney examined Ben Smith:

Q. Now, you've heard his description of some events that he claims happened at work. Is that correct?

A. I have heard them, yes.

Q. Now, were you present on August the 5<sup>th</sup> of 2022?

A. Yes, I was....

Q. Now, do you remember any conversation with Mr. Godwin on that particular day about an injury or an event that occurred at work?

A. I do not.

Q. Okay. Tell me what you do remember about that particular day.

A. On that first said date, he did not come into the office at all. He actually went to his vehicle and I assume went to get a doctor's advice or whatever it was, but he basically tried calling and ended up sending a text message to my assistant plant manager stating that he had to leave.

Q. Did he describe what he had to leave?

A. At that time, no.

Q. Had there been any description to you or to anyone else claiming that he was actually injured at work?

A. No.

Q. Okay. So when he described today in the courtroom about coming to your office and telling you what had happened and then telling you he was going to go to the emergency room, did any of that happen on August the 5<sup>th</sup>?

A. No....

Q. Now, before August the 5<sup>th</sup> of 2022, did you observe the claimant?

A. I had.

Q. Was he having any problems walking at that particular time?

A. He's always had issues walking, but for a few months before that he was definitely hobbling around.

Q. Okay. And was he noticeably limping or having difficulty getting from station to station?

A. Yes. He has always had difficulty getting from station to station....

Q. Now, at any point in time on August the 5<sup>th</sup> of 2022, did he ever come to you complaining of the problem that occurred at work?

A. He had not.

According to the record, however, the claimant treated at Mercy Hospital Fort Smith on August 5, 2022. The claimant complained of an "Ankle injury" and "Leg Pain (PT complains of right posterior leg pain that begins at ankle region and extends up his posterior leg. This began to bother him 6 weeks ago. But significantly worsened. Pt fell after feeling something move in his leg give out. Alert and Oriented x 4). The diagnosis included "Partial tear of Achilles tendon, initial encounter."

Dr. Seth Bartholomew reported on August 5, 2022:

James Godwin is a 54-year-old man who presents emergency department today with complaints of right heel and leg pain. Patient states he's [had] right achilles tendon pain for approximately 6 weeks and has seen his primary care physician for this. Patient was initially referred for an MRI to

evaluate the extent of his injury but it was denied by his insurance company so he was scheduled to start physical therapy this next week. Patient states at work today that he lunged forward quickly and bore all of his weight on the ball of his right foot. Patient states that he felt an instant pain extending from the heel of his right foot up through the calf muscle and states he feels like something is “moving in there.” Patient states the leg gave way causing him to fall....

Musculoskeletal:

General: Swelling, tenderness and signs of injury present. Normal range of motion....

Comments: **Swelling and tenderness with palpation 2-3 inches superior to right heel.**

A radiologist’s impression on August 5, 2022 was “Intact but thickened and heterogeneous right Achilles tendon at real-time imaging. This is consistent with tendinopathy and/or partial tear. No full-thickness tear.” It was noted on August 5, 2022, **“Patient is ambulatory here in the emergency department and had a negative Thompson’s test. The ultrasound results reveal a partial tear of the right achilles tendon. Patient has a pending appointment on Thursday for evaluation and assessment by Physical Therapy.”**

An APRN provided the following Excuse/Letter on August 5, 2022: “James Godwin was seen and treated in our emergency department on 8/5/2022. He may return to work on (sic). No climbing ladders until evaluated and cleared by physical therapy to safely perform the task.”

The claimant’s testimony indicated that he returned to work for the respondents on August 8, 2022.

The claimant treated at Mercy Clinic Free Ferry on August 9, 2022.

Stefanie A. Ellis, APN reported at that time:

James has come in for his pain in the rt achilles region x ~3 months. Patient was initially referred for an MRI to evaluate the extent of his injury but it was denied by his insurance company so he was scheduled to start physical therapy this week. Last week states while at work lunged forward quickly and bore all of his weight on the ball of his right foot. States that he felt an instant pain extending from the heel of his right foot up through the calf muscle and states he felt like something was "moving in there." Patient states the leg gave way causing him to fall....

Right ankle: Swelling present. Tenderness present.

Right Achilles Tendon: Tenderness present.

Ms. Ellis assessed the following: "Negative Thompson's test. The ultrasound results reveal a partial tear of the right achilles tendon. Patient has a pending appointment on Thursday for evaluation and assessment by Physical Therapy....Walking boot RX will be sent in for patient. He is encouraged to wear it while up, not to drive with it, not to sleep with it on."

The claimant was provided physical therapy visits beginning August 11, 2022. A physical therapist recorded the following observations on August 11, 2022: "Inspection of the right ankle reveals considerable soft swelling of the foot, ankle and lower leg with some redness over lower achilles tendon."

The parties stipulated that the employee-employer-carrier relationship existed on September 2, 2022. The claimant testified on direct examination:

Q. What happened then?

A. I was changing a screen in a hammer mill. I took one out and I lifted the other and I had to twist to put it into position and it snapped again....

Q. Did you fall?

A. Yes.

Q. Okay. And did you report this incident?

A. Yes.

Q. Okay. Who did you report this incident to?

A. Ben Smith.

Q. And what was his response?

A. He said, "Okay."

The respondents' attorney examined Ben Smith:

Q. Now, you heard him describe a second event on September the 2<sup>nd</sup> of 2022. Is that correct?

A. Yes.

Q. Did he come to you that day and report an injury to you?

A. No.

Q. Did he have any conversation with you claiming that he was injured on September the 2<sup>nd</sup> of 2022?

A. Not during that time, no.

According to the record, Dr. Justin Clayton examined the claimant on September 7, 2022:

54-year-old male who had an Achilles injury on the right about a month ago or a little bit more than that. He had another injury just about 5 days ago which seems to have completed a partially torn Achilles as best he can tell. In a walking boot.... He has a palpable defect in his Achilles and some tenderness to palpation in that location....

Imaging: I reviewed the plain radiographs that were done previously are unremarkable.

Medical decision making: 54-year-old male with an Achilles tendon rupture on the right. I discussed with him how this would best be treated without surgical intervention. It is important that he follows the nonsurgical protocol which we have given him and he can also give a copy to his physical therapist. We will place a heel lift into his boot today. He

should not be on ladders and should have a 15 pound lifting restriction we will see him in 4 weeks for exam only no imaging.

Dr. Clayton stated on September 7, 2022, "James Godwin was seen in my clinic on 9/7/2022. He may return to work with no use of ladders, and a 15 lb lifting restriction."

A physical therapist noted on September 13, 2022, "Patient reports he has experienced further injury to right achilles on 9/2/22 when he was lifting a heavy screen at work and felt a pop in his right achilles with sudden increase in pain. Patient has been in to see ortho MD and is now on non-operative achilles rupture protocol. Patient is now wearing a wedge in his right cam-walker boot."

The claimant testified on direct examination:

Q. Why is it you no longer work for Mid-South?

A. September 23<sup>rd</sup>, I asked for some workmen's comp so I could get some short-term disability, which their insurance did not have, and at the end of the shift that day they let me go....

Q. And it's your understanding you were terminated. Is that correct?

A. They said, quote, I was suspended. About a week later, I got a letter in the mail from my insurance saying my medical insurance had been terminated on September 23<sup>rd</sup>.

Q. Do you know the reason you might have been suspended?

A. Because I asked for workmen's comp....

Q. Did you remain off of work between September 23<sup>rd</sup> of '22 and December 8<sup>th</sup> of 2022?

A. Did I remain off work?

Q. Yes.

A. Yes, I did.



The respondents' attorney examined Ben Smith:

Q. Now, at some point later, do you recall a conversation with Mr. Godwin discussing a work-related injury that he was claiming?

A. He did come to my office – again, the dates escape me – but he did come to my office one morning and asked if I would put him down for two dates for workmen's comp.

Q. Now, he's described that on September the 23<sup>rd</sup> of 2022 that he was suspended at that point. Does that sound about the right time?

A. Yes.

Q. So about three weeks after this claimed second event on September 2<sup>nd</sup> is when he had that conversation?

A. That is correct.

Q. Okay. Now, at that point, was that the first time you had learned of any claimed work injury?

A. That would be correct.

Q. Now, what did you ask him at that point in time?

A. I stated, "Do you feel like this is work-related?" And his comment was, "That doesn't matter."

Q. Meaning what?

A. I didn't know. I basically stated to him, "Well, it does matter. If you feel like it was work-related, we have ways to deal with it." He then walked away and I had conversations with HR and stuff like that....

Q. Now, at some point he was suspended. Is that correct?

A. That is correct.

Q. And what was the purpose of the suspension?

A. We felt like he was wrongfully trying to claim workers' comp on something that, again, he never previously stated was.

Q. And that would have been on September the 23<sup>rd</sup>, not on August the 5<sup>th</sup> and not on September the 2<sup>nd</sup> which he now claims those events occurred. Is that right?

A. Yes, sir.

Q. Did you have any knowledge before September the 23<sup>rd</sup> of any claimed injury at work?

A. I did not.

Q. He had never reported anything to you?

A. No, sir.

Q. Not ever claimed or said anything about being work-related?

A. Not work-related. He claimed, you know, he had an injury. You know, again, showed us papers. We give him the opportunity to still do his job, but he couldn't walk up things and lift things.

The claimant's attorney cross-examined Ben Smith:

Q. Are you denying that Mr. Godwin fell on 8/5 of '22?

A. I am not denying that.

Q. Are you denying that Mr. Godwin hurt himself on 8/5 of '22?

A. I honestly do not know.

The claimant filed a Form AR-C, CLAIM FOR COMPENSATION, on September 28, 2022. The ACCIDENT INFORMATION section of the Form AR-C indicated that the Date of Accident was August 5, 2022. The claimant wrote regarding the cause of injury, "Short sprint toward equipment controll (sic). Right achilles tendon tore causing me to fall." The CLAIM INFORMATION section of the Form AR-C indicated that the claimant contended that he was entitled to "initial benefits," that is, "Temporary Partial Disability." The claimant also contended that he was entitled to "additional benefits," namely "Additional Medical Expenses."

The claimant filed a second Form AR-C, CLAIM FOR COMPENSATION, on September 28, 2022. The ACCIDENT INFORMATION section of the Form AR-C indicated that the Date of Accident was September 2, 2022. The claimant wrote regarding the cause of injury, "Trying to position screen in Hammer-mill, right achilles tendon

tore & caused fall.” The claimant contended that he was entitled to “Temporary Partial Disability” and “Additional Medical Expenses.”

The claimant followed up with Dr. Clayton on December 7, 2022:

HPI: Patient who has been treated nonsurgically for an Achilles tendon rupture on the right. He has been a little more aggressive that we would like to have seen however he needs to be back at work and at this point is not having a significant amount of pain nor is he having significant dysfunction.

Exam: He is ambulatory in the office without assistive devices and in regular footwear. He does not have complete continuity of his Achilles but it does appear to be better than it was before.

Imaging: No new imaging.

MDM: Achilles tendon rupture on the right at this point we can let him use it as tolerated and he can be seen as needed.

Dr. Clayton stated on December 8, 2022, “James Godwin was seen in my office on 12/7/2022. He may return to work with no restrictions.”

The claimant testified on direct examination:

Q. Now, it looks like you were released to return to work on 12/8 of '22. Is that correct?

A. Yes.

Q. Why were you returned to work?

A. Well, I've got bills. They've got to be paid.

Q. Did you request that Dr. Clayton return you to work?

A. Yes.

A pre-hearing order was filed on March 16, 2023. According to the text of the pre-hearing order, the claimant contended, “He sustained a compensable lower extremity injury on August 8, 2022 while working for Midsouth Milling Company in Fort Smith, Arkansas. Despite objective evidence of injury, the respondents denied compensability of the claimant's

injury. The claimant contends that he is owed medical benefits as well as temporary total disability benefits from September 23, 2022 through a date yet to be determined. Due to the controversion of entitled benefits, the respondents are obliged to pay one half of the claimant's attorney's fee. Claimant reserves the right to raise additional contentions at the hearing in this matter."

The parties stipulated that the respondents "have controverted the claim in its entirety." The respondents contended that the claimant "did not sustain a compensable injury on either date. Claimant's complaints are the result of a preexisting condition and/or condition which did NOT occur at work. As a result, the claimant is not entitled to any medical or indemnity benefits."

The parties agreed to litigate the following issues:

1. Whether claimant sustained a compensable injury on August 5, 2022 and September 2, 2022, regarding his right lower extremity.
2. Compensation rate.
3. If compensable, whether claimant is entitled to medical benefits, and temporary total disability benefits.
4. Attorney's fees.

The parties reserved all other issues.

After a hearing, an administrative law judge filed an opinion on July 20, 2023. The administrative law judge found that the claimant failed to prove he sustained a compensable injury. The administrative law judge

therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

## II. ADJUDICATION

### A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

(A) “Compensable injury” means:

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

#### 1. August 5, 2022

An administrative law judge found in the present matter, “2. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his right Achilles tendon on August 5, 2022, or on September 2, 2022.” The Full Commission does not affirm this finding. We find that the claimant proved he sustained compensable injuries on August 5, 2022 and September 2, 2022.

The claimant testified that he became employed with the respondents in 2019. The parties stipulated that the employment relationship existed on August 5, 2022. The claimant testified that he was working for the respondents that day as a “Mixing Room Operator.” The claimant testified that he “felt something give” in his right foot while stepping toward a malfunctioning industrial machine. The claimant testified that he was “in a hurry” and stated, “I pivoted and put all of my weight on my right foot and that is when it happened.”

The claimant testified that he reported the August 5, 2022 accident to his supervisor, Ben Smith. Ben Smith denied that the claimant reported an accidental injury to him. The administrative law judge determined that Ben Smith was a credible witness and that the claimant was not credible. Nevertheless, it is the function of the Commission to determine the credibility of the witnesses and the weight to be given their testimony. *Johnson v. Hux*, 28 Ark. App. 187, 772 S.W.2d 362 (1989). It is the duty of

the Full Commission to enter findings in accordance with the preponderance of the evidence; our function is not to determine whether there is substantial evidence to support an administrative law judge's findings. *Johnson, supra*, citing *Jones v. Scheduled Skyways, Inc.*, 1 Ark. App. 44, 612 S.W.2d 333 (1981).

The Full Commission finds in the present matter that the claimant was a credible witness. The medical evidence of record corroborated the claimant's testimony. It was noted at Mercy Hospital on August 5, 2022, "Pt fell after feeling something move in his leg give out." The diagnosis on August 5, 2022 was "Partial tear of Achilles tendon, initial encounter." The record contains no diagnosis of a partial Achilles tendon tear prior to the August 5, 2022 accidental injury. Dr. Bartholomew directly corroborated the claimant's testimony on August 5, 2022: "Patient states at work today that he lunged forward quickly and bore all of his weight on the ball of his right foot. Patient states that he felt an instant pain extending from the heel of his right foot up through the calf muscle and states he feels like something is 'moving in there.'" Dr. Bartholomew reported "swelling" in the claimant's right lower extremity. "Swelling" is an objective medical finding establishing a compensable injury. *See White County Medical Center, LLC v. Johnson*, 2022 Ark. App. 262, 646 S.W.3d 245. There were no medical reports of "swelling" in the claimant's right lower extremity prior to the August 5, 2022

accidental injury. Nor were any abnormalities shown in the claimant's right Achilles tendon prior to the August 5, 2022 work-related accident.

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a "compensable injury." The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on August 5, 2022. The claimant also established a compensable injury by medical evidence supported by objective findings, namely a "Partial tear of the Achilles tendon" and "swelling" in the claimant's right lower extremity. The Full Commission finds that these objective medical findings were causally related to the August 5, 2022 accidental injury and were not causally related to a prior injury or pre-existing condition. These objective medical findings include "swelling" physically noted in the claimant's right ankle on August 9, 2022, in addition to the August 11, 2022 report of "soft swelling of the foot, ankle and lower leg with some redness over lower Achilles tendon." These objective medical findings established a compensable injury to the claimant's right lower extremity.

2. September 2, 2022



The parties stipulated that the employment relationship existed on September 2, 2022. The claimant testified that his right lower leg “snapped” while changing a screen in the respondent-employer’s hammer mill. Although supervisor Ben Smith denied that the claimant reported a work-related injury that day, the medical evidence again corroborated the claimant’s testimony. Dr. Clayton reported on September 7, 2022 that the claimant had reported an injury five days earlier: “He had another injury just about 5 days ago which seems to have completed a partially torn Achilles as best he can tell....He has a palpable defect in his Achilles and some tenderness to palpation in that location.” Dr. Clayton diagnosed “Achilles tendon rupture on the right.” The record does not show that the claimant suffered from a complete Achilles tendon rupture prior to the September 2, 2022 accidental injury.

The Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a “compensable injury.” The claimant proved that he sustained an accidental injury causing physical harm to the body. The claimant proved that the injury arose out of and in the course of employment, required medical services, and resulted in disability. The claimant proved that the injury was caused by a specific incident and was identifiable by time and place of occurrence on September 2, 2022. The claimant also established a compensable injury by medical

evidence, namely, the “Achilles tendon rupture on the right” diagnosed by Dr. Clayton on September 7, 2022. The claimant proved that this objective medical finding was causally related to the September 2, 2022 accidental injury.

B. Temporary Disability

For scheduled injuries the injured employee is to receive temporary total disability benefits during his healing period or until he returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of an injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more stable and nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Whether an employee’s healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

In the present matter, the Full Commission finds that the claimant proved he was entitled to temporary total disability benefits beginning September 23, 2022 and continuing until December 8, 2022. The Full Commission has determined that the claimant proved he sustained a

compensable scheduled injury on August 5, 2022. The claimant testified that he returned to work for the respondents on August 8, 2022. We have found that the claimant proved he sustained another compensable scheduled injury on September 2, 2022. Dr. Clayton returned the claimant to restricted work beginning September 7, 2022. The respondents opted to terminate the claimant's employment effective September 23, 2022. Ben Smith testified that the respondents terminated the claimant's employment, essentially asserting that the claimant "was wrongfully trying to claim workers' comp." Nevertheless, the evidence shows no wrongful conduct on the claimant's part, nor does the record show that the claimant "unjustifiably refused suitable employment." See Ark. Code Ann. §11-9-526(Repl. 2012); *Robertson v. Pork Group, Inc.*, 2011 Ark. App. 448, 384 S.W.3d 649.

The Full Commission therefore finds that the claimant proved he was entitled to temporary total disability benefits beginning September 23, 2022, the date the respondents terminated the claimant's employment. Dr. Clayton reported on December 7, 2022 that the claimant was "ambulatory in the office without assistive devices and in regular footwear." Dr. Clayton opined that the claimant was able to return to work with no restrictions on December 8, 2022. The evidence therefore demonstrates that the claimant reached the end of a healing period for his compensable scheduled injury no later than December 8, 2022. Temporary disability benefits cannot be

awarded after a claimant's healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). The Full Commission thus finds that the claimant proved he was entitled to temporary total disability benefits beginning September 23, 2022 until December 8, 2022. The claimant testified that he earned \$15.00 per hour and was working 50 hours weekly at the time of his compensable injuries. The Full Commission finds that the claimant's average weekly wage was \$549.45. See Ark. Code Ann. §11-9-501(Repl. 2012) and Ark. Code Ann. §11-9-518(Repl. 2012).

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he sustained compensable scheduled injuries on August 5, 2022 and September 2, 2022. The claimant proved he was entitled to temporary total disability benefits beginning September 23, 2022 and continuing until December 8, 2022. The claimant proved that the medical treatment of record was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant proved he sustained compensable scheduled injuries on August 5, 2022, and September 2, 2022, and is entitled to temporary total disability benefits beginning September 23, 2022, and ending December 8, 2022.

The claimant contends that his injuries arose from specific, work-related incidents on August 5, 2022, and September 2, 2022. A specific incident injury is an accidental injury arising out of the course and scope of employment caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). This statute requires that a claimant 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 establishing an injury; and (4) that the injury was caused by a

specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i) and Ark. Code Ann. § 11-9-102(D). "Arising out of the employment" refers to the origin or cause of the accident, while the phrase "in the course of the employment" refers to the time, place, and circumstances under which the injury occurred. *White Cnty. Med. Ctr. v. Johnson*, 2022 Ark. App. 262, 646 S.W.3d 245 (2022).

The record is clear that the claimant's lower extremity pain was documented and treated long before his alleged injuries on August 5, 2022, and September 2, 2022. In fact, the claimant admitted at the hearing on this matter that he had treated with his primary care physician, APN Stefanie Ellis, for these complaints prior to August 5, 2022. (Hrng. Tr, P. 31). According to the claimant's medical records, prior to August 5, 2022, the claimant was treated for the same complaints which he alleges occurred as the result of an on-the-job injury. APN Ellis ordered an MRI to evaluate his pain and physical therapy prior to August 5, 2022, but claimant's insurance denied the request for an MRI. (Resp. Ex. 1, P. 24).

When claimant treated at Mercy Hospital in Fort Smith on August 5, 2022, Dr. Seth Bartholomew reported that the claimant "complains of right posterior leg pain that begins at ankle region and extends up the posterior leg. This began to bother him 6 weeks ago. But significantly worsened." (Resp. Ex. 1, P. 1). Dr. Bartholomew went on to report, "James G. Godwin

is a 54-year-old man who presents [sic] emergency department today with complaints of right heel and leg pain. Patient states he's [sic] right Achilles tendon pain for approximately 6 weeks and has seen his primary care physician for this." (Resp. Ex. 1, P. 24)

When the claimant later visited APN Ellis on August 9, 2022, records reflect that the claimant's right Achilles region complaints began three months prior. (Resp. Ex. 1, P. 59). There is simply no evidence beyond the claimant's own testimony supporting the conclusion that the claimant's injury arose from the alleged specific incident on August 5, 2022. The claimant had been receiving treatment for the same complaints prior to his alleged injury and admitted to his medical providers he had been suffering from the pain in his right Achilles region from 6 weeks up to 3 months prior to August 5, 2020, the date of the alleged compensable injury.

The question of credibility further shows these claims should be denied. While it is the function of the Commission to determine the weight and credibility of a witness, we should not wholly disregard the findings of an Administrative Law Judge who viewed a witness in person and was, therefore, able to consider their disposition and expression in his findings. In this instance, the claimant's credibility is lost when he alleges at every turn on cross examination that he cannot recall conversations held with his physicians. The claimant baselessly disputed any record that proved that

his injury was pre-existing with no supporting evidence, simply insinuating that multiple independent practitioners were either wrong or lying. For example, respondent's attorney, Mr. Guy Wade, had the following dialogue with the claimant on cross-examination:

By Mr. Wade:

Q: On this day it says, "This began to bother him six weeks ago." That is Page 1 of the Respondent's Exhibit. So, the pain you are describing, "Leg pain: Patient complains of right posterior leg pain that begins at ankle region and extends at his posterior leg." And then they say, "This began to bother him six weeks ago." So, they are saying that the same pain you are complaining of on August the 5th had been going on for six weeks?

A: I do not recall that.

Q: Now, you have already gone to your doctor, Dr. Ellis, with the same complaints, correct?

A: Correct.

Q: Okay. Because on Page 24 in the same record, the August the 5th, 2022 Mercy Hospital emergency room record, "Patient states his right Achilles tendon pain for approximately six weeks and has seen his primary care physician for this. Patient was initially referred for an MRI to evaluate the extent



of his injury, but it was denied by his insurance company so he was scheduled to start physical therapy this next week." So, you had seen Dr. Ellis before August the 5<sup>th</sup>. She had already recommended an MRI which was denied, but she had already scheduled you for physical therapy; correct?

A: She had not scheduled me for physical therapy until after the tendon tear.

Q: Well, this says she scheduled the therapy because you couldn't have the MRI. So is this wrong?

A: The MRI was not scheduled until after the tear. She tried to refer me for it.

Q: Sir, she tried to refer you for an MRI before August the 5<sup>th</sup> of 2022 because of your Achilles pain you were having six weeks before August the 5<sup>th</sup>, correct?

A: That is not correct.

Q: Well, that is the way the record reads. That is what somebody told the emergency room.

A: I've never before been referred for an MRI for anything before my tendon tear.

Q: Did you tear your tendon before August the 5<sup>th</sup> of 2022 because you are complaining of the same pain that began in June?

A: No, sir.

Q: So you are saying this medical record is wrong?

A: I am saying that the dates may be mixed up.

Q: Well, sir, let me ask you and I will let you to read [sic] it because I want to make sure I read it correctly and that you understand.

A: Okay.

Q: Did you read that?

A: I read it.

Q: This is August the 5th of 2022. So you are telling us today that all of this happened: You saw your primary care physician, you had an MRI denied, and you have had physical therapy scheduled all on that day?

A: I told her I had pain in my foot prior, but I had not been referred for an MRI before the tendon tear. And my insurance did deny it.

Q: Sir, that didn't all happen on August 5th. That happened before August 5th because you told them that; correct?

A: Then that is something I don't recall. I suppose it did happen, then.

Q: Did anybody go the hospital with you when you were telling the emergency room this information?

A: No.

Q: Was anybody else present to give them the history of the prior complaints or problems you had had with your right foot?

A: No.

Q: So you would have been the only person giving them this information; correct?

A: Correct.

Q: Okay. So you already had physical therapy scheduled based on this as a result of your visit with Dr. Ellis; correct?

A: After the tear, yes.

Q: Now, when you say after the tear --

A: After August 5<sup>th</sup>.

Q: Well, this says you already had physical therapy scheduled whenever you saw Dr. Ellis.

A: Well, that is wrong. (Hrng. Tr., Pp. 31-34)

Later in his cross-examination, the claimant continued to evade direct questions.

Q: When you were in the emergency room on August the 5<sup>th</sup> of 2022 when it says "Patient states his right Achilles tendon pain has been going on for approximately six weeks," is that reporting what you told them?

A: I don't remember.

Q: When it says, "He has seen his primary care physician for this," you didn't see Dr. Ellis on August 5<sup>th</sup>, did you?

A: No.

Q: Okay. It says, "Patient was initially referred for an MRI to evaluate the extent of his injury, but it was denied by the insurance company so he was scheduled to start physical therapy next week." That was already in the works because you had seen Dr. Ellis or APN Ellis not on August 5<sup>th</sup> of 2022 because you didn't see her that day; correct?

A: I didn't start physical therapy until after the tendon –

Q: I am not denying that. What it says is it was already scheduled to start because Dr. Ellis had scheduled before August the 5<sup>th</sup> of 2022. Do you understand? August the 25<sup>th</sup> [sic], the only medical provider you saw was the hospital emergency room; correct?

A: On August 5<sup>th</sup>.

Q: Okay.

A: The next person I seen was my primary.

Q: I understand that.

A: Then she referred me to physical therapy.

Q: Well, I understand that is what your mind may tell you, but you had already been scheduled for physical therapy before that; correct?

A: If that is what she says, then it is true.

Q: Listen to my question. August the 5<sup>th</sup>, the day you claimed you were injured, you went to the emergency room; correct?

A: Yes.

Q: And that is the only place you went that day?

A: Yes.

Q: And that day you told the emergency room personnel this had been going on for six weeks, correct, based on this record?

A: I suppose so.

Q: You also told them that you had seen Nurse Ellis or APN Ellis

before August the 5<sup>th</sup> of 2022;  
correct?

A: Yes.

Q: You also told them that you had initially been referred for an MRI, but that was denied; correct?

A: I suppose. I don't recall.

Q: You also told them that you were scheduled to start physical therapy the next week based on what Dr. Ellis did or APN Ellis; correct?

A: I do not remember.

Q: But you would not have gotten that information from anywhere else because you didn't see Dr. Ellis that day; correct?

A: Correct.

Q: Okay. Now, when you did see Dr. Ellis, as the Court has pointed out on Page 59, that was August the 9<sup>th</sup> of 2022, so it would be four days later; correct?

A: Sounds right.

Q: And at that time she says, "James has come in today for his pain in his right Achilles region times three months;" that you have been having this pain in this area for three months. Do you know where she would have gotten that if she didn't get that from you?

A: I don't know.

Q: And it goes on to say, "Patient was initially referred for an MRI, but it was denied by his insurance company, so he was scheduled for physical therapy to start this week." That is the same thing the emergency room record says; isn't it?

A: I don't know. I was not scheduled for physical therapy until after the tear.

Q: I understand it didn't take place until after the tear, but it was scheduled beforehand based on these records; correct?

A: I don't know. That has been a while. (Hrng. Tr., Pp. 38-41).

Benjamin Glen Smith was the operations/plant manager for the respondent employer and testified on the date of the alleged accident, August 5, 2022, the Claimant never came to the office, never described why he had to leave work or reported he had been injured on the job. (Hrng. Tr. Pp. 47, 48)

Mr. Smith testified as follows concerning the claimant's issues with walking prior to August 5, 2022:

By Mr. Wade:

Q: Now, before August the 5<sup>th</sup> of 2022, did you observe the Claimant?

A: I had.

Q: Was he having any problems walking at that particular time?

A: He's always had issues with walking, but a few months before that he was definitely hobbling around.

Q: Okay. And was he noticeably limping or having difficulty getting from station to station?

A: Yes. He has always had difficulty getting from station to station. Typically speaking, when he would have to turn in a sample, which is part of his job, he would have to walk probably 200 yards and he would stop at least three to four times before getting to that and three to four times coming back to his station.

Q: And this was before August the 5<sup>th</sup> of 2022?

A: It was.

Q: Now, had this become noticeably worse prior to that?

A: Not really, I guess.

Q: Okay. Now, at any point in time on August the 5<sup>th</sup> of 2022, did he ever come to you complaining of the problem that occurred at work?

A: He had not.



Q: Now, he returned to work the next time he was scheduled; is that correct?

A: That is correct.

Q: And at that point in time, did you have any conversations with him?

A: He mentioned that he was having issues and went to a doctor.

Q: Okay.

A: But still never claiming it was a work-related issue.

Q: Now, did you ask him if something had happened at work?

A: I had not.

Q: Not at that time?

A: Not at that time.

Q: Did he report that something had happened at work?

A: Never.

Q: On August the 5<sup>th</sup>?

A: No.

Mr. Smith went on to testify that the claimant did not report a work-related injury on the second date of the alleged accident of September 2, 2022. It was not until approximately three weeks later that he asked Mr.

Smith to put him down for two dates for workman's [sic] compensation.

This was the first time the claimant mentioned any alleged work-related accident. (Hrng. R. Pp. 51,52).

The record clearly shows that the claimant was evasive at best and untruthful at worst. For this reason, the only portions of the record that we can rely on are the medical records, which clearly show the claimant was having the same medical issues he now claims were work-related for up to three months prior to August 5, 2022, and the testimony of Mr. Benjamin Smith that the claimant had issues walking and was hobbling around months before the alleged accident date. The sum total of the reliable evidence proves that the claimant suffered from right lower extremity pain long before his alleged injuries on August 5, 2022, and September 2, 2022.

For the reasons set forth above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner