

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G902398

JAMES E. MEAD, JR., CLAIMANT  
EMPLOYEE

ARKANSAS DEPARTMENT OF CORRECTIONS, RESPONDENT  
EMPLOYER

PUBLIC EMPLOYEE CLAIMS DIVISION, RESPONDENT NO. 1  
INSURANCE CARRIER/TPA

DEATH & PERMANENT TOTAL RESPONDENT NO. 2  
DISABILITY TRUST FUND

OPINION FILED NOVEMBER 8, 2022

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents No. 1 represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed May 17, 2022. The administrative law judge found that the claimant proved he sustained "a rapid repetitive work-related injury." After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant did not prove he sustained a compensable injury.

I. HISTORY

The testimony of Eddie Mead, now age 61, indicated that he became employed with the respondents, Arkansas Department of Corrections, in about 2008. The claimant's testimony indicated that he was transferred to the respondent-employer's North Central Unit (Calico Rock) in 2013. The claimant testified on direct examination:

Q. And so you're basically supervising the prisoners in a prison system, right?

A. Yes, yes.

Q. Okay. Eddie, what I want you to do is just basically help us understand when you started, first started having a lot of problems with your feet and what was going on to cause the problem with your feet and your – and your hip.

A. I – I started having – I would say its – I don't remember exactly when it started 'cause it wasn't just a particular injury that I had. It was just I started to have - and I had numbness in my feet probably a year to six months after being there, but I thought it was, you know, sore feet first, and I had –

Q. So what was going on with your feet? Why were your feet having trouble? What were you having to do in your job?

A. I was up and down a lot standing on concrete –

Q. Up and down what?

A. – concrete stairs, opening doors. Sometimes you're on your feet constantly, and, you know, just typical climbing – climbing stairs, climbing ladders up into the tower, just basic doing your rounds and everything involved with it. It – I started to get a growth on the back of my heel. I had noticed it, and I went to the doctor and asked him about it, and that was – that was probably somewhere around 2016 or somewhere in there when I actually started –

Q. So about a year before you were terminated, correct.

A. Yeah....

Q. In that job, the last job you had, you basically were just a prison guard, is that right?

A. That's right.

Q. Break up fights, do things like that? Whatever happened, you needed to have control of the prisoners, right?

A. Yes.

Q. And then you were constantly on your feet doing that?

A. Not constantly but most of the time.

Q. How many hours out of a 12-hour day would you be required to be on your feet?

A. Well, it's – it would probably be around seven or eight. It's kind of hard to say because you're up and down and over here and over there, and you're –

Q. Are you constantly moving in the job?

A. Most of the time, yeah, yeah.

According to the record, the claimant treated at Ferdowsian Foot And Ankle Specialty Clinic beginning March 17, 2017. Dr. Kevin Steffen, Jr. reported at that time:

Patient presents to clinic with a complaint of pain in the right posterior heel.

Patient had x-ray confirming heel spur. Has pain with increased activity. Patient has tried heel cups without success. Patient is seeking treatment options at this time, is also complaining of toenail fungus....

Significant bony prominence noted to the posterior heel on the right. Pain with palpation and plantar flexion against resistance. Mild edema noted. Nails are slightly thickened and discolored.

Dr. Steffen assessed "Onychomycosis," "Achilles tendonitis right," "posterior heel spur right," and "Pain." Dr. Steffen initially treated the claimant conservatively.

Dr. Steffen reported on April 25, 2017, "Patient presents to clinic with a continued complaint of pain in the right posterior heel. Patient has attended physical therapy, pain seems to be increasing. Patient is seeking

additional options at this time.” Dr. Steffen’s treatment plan included, “dispensed a pneumatic walking boot for the patient’s right foot and ankle after was fitted to the patient’s foot and ankle. Patient should discontinue therapy at this time and continue with strict immobilization.”

On May 2, 2017, the claimant submitted a Request for Family and Medical Leave to begin April 25, 2017. The claimant’s FMLA request was approved effective May 11, 2017.

Dr. Steffen noted on May 25, 2017, “Patient presents to clinic with a continued complaint of pain in the right posterior heel. Pain has improved significantly. Patient has very little pain at this time since he’s been in the boot.” Dr. Steffen assessed “Achilles tendonitis, right,” “Posterior heel spur, right,” and “Pain.”

The claimant followed up with Dr. Steffen on August 1, 2017: “Patient presents to clinic with a continued complaint of pain in the right posterior heel and plantar heel. Pain is okay until after his 3<sup>rd</sup> day of work. Patient is then unable to work due to pain. Is still waiting on custom orthotics which he is hopeful will work. Is asking about surgical intervention....Patient would like to be scheduled for the TOPAZ procedure which was discussed in detail with the patient versus removal of the spur. Patient to follow up for pre op once surgery is scheduled.”

Dr. Steffen performed surgery on August 18, 2017: “Plantar fasciotomy, right with Topaz, and tenolysis of the flexor tendons on the right with Topaz.” The pre- and post-operative diagnosis was “Plantar fasciitis, right, and Achilles tendinitis, right.”

The claimant followed up with Dr. Steffen on August 23, 2017: “Patient presents to clinic for post op TOPAZ right plantar fasc and achilles. Has very little pain at this time.” Dr. Steffen noted on August 30, 2017, “Patient presents to clinic for post op TOPAZ right plantar fasc and achilles. Patient now states that his surgery foot feels better than his left.”

The claimant continued to follow up with Dr. Steffen, who reported on September 28, 2017: “Patient presents to clinic for post op TOPAZ right plantar fasc and achilles. He continues to have no pain, believes the incision is healing well, still has some mild drainage....Patient should continue with bandage changes. Once the ulcerations healed, may return to work. Followup when necessary per patient’s wishes.”

The parties stipulated that the claimant “reached maximum medical improvement (MMI) on October 12, 2017.”

The parties stipulated that “an employer-employee relationship existed on or about October 24, 2017, the date of the alleged injuries and the claimant’s last date of employment with the respondents.”

Lt. Chris Brandon reported to Warden Stephen D. Williams on  
October 24, 2017:

On October 24, 2017 Cpl. Eddie Mead failed to carry out work instructions and falsified an inmate count as an official state document.

### **Statement of Facts**

On October 24, 2017, Cpl. Eddie Mead was assigned to Barracks 2 and 3. During the 9:39AM count, after the second headcount of 3 barracks was inaccurate, he was instructed to enter 3 barracks and conduct a roster count of all the inmates physically inside the barracks. Cpl. Mead entered the barracks and observed 11 inmates on the upper tier of the barracks so he marked 11 inmates on the 3 barracks roster; he then exited the barracks without counting the lower tier, called the Lieutenant's Office and reported that there were 18 inmates in the barracks. The roster was requested in the Office and upon reviewing the count roster, it was discovered that Cpl. Mead had only marked the 11 inmates on the upper tier on the roster which left seven inmates on the lower tier that he did not count on the roster....At this point, Sgt. Gary Queen recounted barracks 3 and wrote all 18 inmates' names down verifying their presence and count was cleared at 10:20 a.m.

In an attempt to correct Cpl. Mead and to prevent any future incidents of this nature, I then questioned Cpl. Mead on his roster count procedures in the Captain's Office in the presence of Capt. Bruce Sanders and Sgt. Gary Queen. Cpl. Mead openly admitted that he did not count the entire barracks during the roster count....

### **Conclusion**

After careful deliberation, and review of the circumstances surrounding this incident, this writer believes DISCHARGE to be consistent with this employee policy violation and to be an objective and non-discriminatory response to this infraction....

Warden Stephen Williams informed the claimant in part on October 25, 2017, "I have no other option but to terminate your employment with the Arkansas Department of Correction effective immediately."

The claimant returned to Dr. Steffen on March 12, 2018:

Patient presents to clinic with a complaint of continued pain in the right heel as well as numbness in the left foot. Is no longer working and has no insurance. Is still having pain and would like to discuss treatment options....

Significant bony prominence noted to the posterior heel on the right. Incision on posterior heel is well-healed, still significant pain and edema to palpation.

Dr. Steffen assessed "Achilles tendonitis right," "Radiculopathy right" and "Pain." Dr. Steffen's plan included, "Discussed continued treatment including icing, stretching, anti-inflammatory medications and immobilization. Discussed surgical intervention as well. Also recommended patient have lower back evaluated. Follow up PRN per patient's wishes."

Dr. Steffen signed a "TO WHOM IT MAY CONCERN" letter on March 12, 2019:

IT IS MY OPINION BASED UPON A REASONABLE DEGREE OF MEDICAL CERTAINTY AS THE TREATING PHYSICIAN OF JAMES EDWARD MEAD, JR. THAT HIS EMPLOYMENT AT THE ARKANSAS DEPARTMENT OF CORRECTIONS, NORTH CENTRAL UNIT, FOR THE PAST EIGHT (8) YEARS REQUIRING HIM TO CONSTANTLY STAND AND/OR WALK AS A CORRECTIONAL OFFICER AND IS THE MAJOR REASON (MORE THAN 50%) OF HIS NEED FOR TREATMENT FOR HIS FEET AND/OR HIS KNEES. EVEN THOUGH MR. MEAD MAY HAVE HAD A

PRE-EXISTING DISEASE OR CONDITION OR EVEN JUST THE NATURAL PROCESS OF AGING, HIS WORK THE EIGHT (8) YEARS OF WORK REQUIRING A CONSTANT NEED TO STAND AND/OR WALK IN HIS JOB AS A CORRECTIONAL OFFICER IN THE CALICO ROCK, ARKANSAS PRISON AGGRAVATED HIS PRE-EXISTING CONDITION AND WAS THE MAJOR REASON (MORE THAN 50%) OF HIS NEED FOR TREATMENT AND THIS MAN SHOULD, THEREFORE, BE ENTITLED TO MEDICAL TREATMENT FOR THIS WORK-RELATED PROBLEM UNDER ARKANSAS LAW.

THEREFORE, THE MAJOR CAUSE (MORE THAN 50%) OF HIS NEED FOR TREATMENT AND PRESENT DISABILITY ARISES OUT OF HIS WORK AS A PRISON GUARD FOR THESE PAST EIGHT (8) YEARS AND IS THE NATURAL CONSEQUENCES OF HIS NEED TO STAND AND WALK IN HIS EMPLOYMENT THESE PAST EIGHT YEARS UP UNTIL AUGUST 25, 2017, WHEN HE REQUIRED SURGERY.

The claimant signed a Form AR-C, CLAIM FOR COMPENSATION, on April 10, 2019. The ACCIDENT INFORMATION section of the Form AR-C indicated that a "gradual onset" injury occurred on October 24, 2017. The "body part injured and cause of injury" was described: "At the time of the injury was working as a prison guard and ran 2 barracks. In each barrack there were 60 prisoners which kept him constantly on his feet while taking care of them. The claimant sustained gradual onset injuries to both feet and knees. October 24, 2017 was the last date he could work."

Dr. Steffen reported on June 28, 2021:

Patient presents to clinic complaining of pain in both feet. Patient states that it is worse with prolonged standing or walking. States that it is in the front of the foot and radiates up the ankle and into the knees at times. Patient describes the pain as burning and shooting pains as well as numbness.



Patient has difficulty walking due to the numbness in the feet. Patient states that he has had his back evaluated and suggested that he has stenosis in the neck and lower back. Patient is taking gabapentin 300mg BID at this time. Also relates to numbness starting in his hands. Also was recently diagnosed with diabetes. Patient is seeing additional options....mild edema with varicosities noted bilaterally, tightness to posterior muscles bilaterally, no specific area of pain to palpation on exam.

Dr. Steffen assessed "Radiculopathy," "DM with neuropathy," "Achilles tendonitis b/l," "difficulty walking," and "Pain." Dr. Steffen's treatment plan included "icing, stretching, supportive shoes, inserts, anti-inflammatory medications, increasing gabapentin, PT and lower back treatments."

Dr. Steffen noted on August 4, 2021, "Patient presents to clinic with a continued complaint of pain in both feet. Patient is also complaining of pain in the left great toe since he stubbed the toe and loosened the nail. It has not stopped bleeding. Patient is seeking treatment options." Dr. Steffen performed a "total temporary avulsion" of the claimant's left toenail.

The claimant followed up with Dr. Steffen on August 11, 2021: "Patient presents to clinic for post op avulsion left great toenail. Patient is doing well with no pain in the toe. Has not been stretching or scheduled PT yet." Dr. Steffen assessed "DM with neuropathy," "contusion left hallux with nail damage, post op," and "Pain."

Dr. Steffen reported on October 19, 2021: "Patient presents to clinic for follow up of pain in both feet. Patient no longer has pain in the back of the heels, but still complains of burning, paresthesias and cramping of the feet, worse at the end of the day....mild edema with varicosities noted bilaterally, tightness to posterior muscles bilaterally, no specific area of pain to palpation on exam." Dr. Steffen assessed "Radiculopathy," "DM with neuropathy," "Achilles tendonitis b/l," "difficulty walking," "Pain," and "PVD." Dr. Steffen's treatment plan included "icing, stretching, supportive shoes, inserts, anti-inflammatory medications, increasing gabapentin, PT and lower back treatments. Follow up in 2 months."

Dr. Steffen was deposed on November 3, 2021. The respondents' attorney questioned Dr. Steffen:

Q. The Achilles tendonitis in terms of, I guess, patients, in particular Mr. Mead, is there a typical type of activity or injury or something that causes Achilles tendonitis?

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

Q. Okay. So you're calling that an overuse-type injury?

A. Typically it is, yeah.

Q. In Mr. Mead's case when he first came in in March of 2017, do you recall – did he express to you any sort of overuse-type activity?

A. Just that he was on his feet a lot, you know, and that – and, you know, he didn't have any – I don't recall any specific event that he said. It was just more of a – he was just on his feet a lot at work. And I think he did mention chasing people or running or – he had to do that on occasion but nothing that he recalled was – that happened, you know....

Q. During the time in 2017, do you recall him ever telling you, Oh, by the way, Doctor, I think my foot or my Achilles tendon or any leg pain I'm having is related to my job?

A. Yeah. I think we talked about that, not necessarily, you know, saying yes that I was – this was caused from the job. But, you know, I think I talked to him that being on your feet that much is – you know, and doing the things that you have to do at that job can significantly cause issues with his foot.

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

A. I would probably say that if he was not on his feet and not doing that job, that his foot probably would not have hurt as much as it did, you know, if he had something like what I do where I get up and walk and then sit down for 10, 15 minutes and talk to somebody, then stand up and – you know, frequent resting and sitting. I don't know that he would have the issues.

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

A. I think his job, from my standpoint, was a lot of standing and a lot of walking and a lot of time on his feet taking a lot of steps throughout the day. And I think that aspect of it is what the issue is....

Q. But is it your opinion that the work Mr. Mead had done at the Arkansas Department of Corrections for a period of time prior to coming in to seeing you, that somehow or another that that work at the Department of Corrections is what led to him having this Achilles tendonitis?

A. I believe that – yeah. His job – his duties on the job contributed to the pain and the Achilles tendinitis due to what

he has to do at his job or had to. I think if he didn't have to do those things, then he probably would not have had it.

The claimant's attorney questioned Dr. Steffen:

Q. And with regard to this injury to James, what I'm interested in – and, again, I'm just wanting to confirm that you have not changed your opinion that at least the major reason for the need for treatment was his work, working as a prison guard, taking care of two barracks with 60 prisoners in each barrack. That much being on your feet walking and running and such, going up and down stairs certainly would be at least a 51 percent cause of the problems that he was having and the need for treatment. Is that correct?

A. Yes, I believe....

Q. So you haven't changed your mind with regard to that To Whom It May Concern. You're just doing the best you can to get James back to work and be able to do something, if he can?

A. Yeah.

Q. Is that correct?

A. Yes, that's correct....

Q. And you do remember him now that I've talked about being a prison guard. I mean, he – Eddie has told you these things before –

A. Yes.

Q. – has he not, and how much he had to use his feet in his duties for those eight years he worked there?

A. He did talk about it.

A pre-hearing order was filed on January 21, 2022. According to the text of the pre-hearing order, the claimant contended, "The claimant contends that he sustained compensable injuries performing employment services for the respondent-employer. The claimant contends that he is entitled to reasonable and necessary medical treatment under the direction of Dr. Kevin Steffen. The claimant contends that he is entitled to an

impairment rating related to the surgery performed by Dr. Steffen on August 25, 2017. The claimant contends that he is entitled to PTD benefits as a result of his injuries to his feet.”

The parties stipulated that the respondents “have controverted this claim in its entirety.” The respondents contended, “The claimant alleges he sustained gradual work-related injuries to both knees and both feet. The claimant filed a Form AR-C dated April 10, 2019 (Copy attached). The Form AR-C appears to have been received by the Arkansas Workers’ Compensation Commission on April 15, 2019. The Form AR-C was received by Respondent No. 1 Public Employee Claims Division on April 16, 2019. The respondents would contend that the notice provisions of Ark. Code Ann. §11-9-701(a)(1) apply to the facts of this claim and the respondents are not responsible for disability, medical, or other benefits prior to receipt of the employee’s report of injury.”

The respondents contended, “The respondents contend that the claimant did not sustain compensable lower extremity injuries while employed with the Arkansas Department of Correction. The claimant also has a history of lower extremity problems preceding October 24, 2017. In the alternative, if it is determined that the claimant sustained compensable injuries to his lower extremities as a result of his employment with the respondent-employer, the respondents contend that the claimant merely

sustained a temporary aggravation of his pre-existing condition for which he previously returned to his baseline condition. The claimant had been treated by Kevin D. Steffen, Jr., DPM. Dr. Steffen had released the claimant to full duty work with no restrictions in June, 2017, and an essential job function questionnaire noted no physical limitations for the claimant on October 12, 2017.”

The respondents contended, “The claimant was employed as a correctional officer for the respondent-employer. He was working on October 24, 2017, and an employee disciplinary hearing was conducted on that day at approximately 11:30 a.m. After this disciplinary hearing it was determined that the claimant had violated the employer’s regulations regarding conducting proper inmate counts and providing accurate and correct information to superiors. The claimant’s employment was terminated on October 25, 2017. The respondents contend that had the claimant not been terminated for cause, he would still be employed today. Following the termination of his employment from the respondent-employer, the claimant owned and operated an antiques store in 2018.”

The respondents contended, “As the claimant contends he sustained injuries to his lower extremities, the limitations expressed in Ark. Code Ann. §11-9-521(g) are applicable. Respondent No. 1 contends that the claimant is not permanently and totally disabled.”

The parties agreed to litigate the following issues:

1. Compensability.
2. Entitlement to reasonable and necessary medical treatment.
3. All other issues are reserved.

After a hearing, an administrative law judge filed an opinion on May 17, 2022. The administrative law judge found that the claimant did not prove he sustained a compensable injury to his feet caused by a “specific incident.” The administrative law judge also found that the claimant did not prove he sustained a compensable injury to his knees. The claimant does not appeal those findings and contends that the Full Commission should affirm the administrative law judge’s opinion. The administrative law judge found that the claimant proved he sustained “a rapid repetitive work-related injury” which was “the major cause of the claimant’s injury to both of his feet.” The respondents appeal to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-102(4) provides, in pertinent part:

- (A) “Compensable injury” means:
  - (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:
    - (a) Caused by rapid repetitive motion.

In analyzing whether an injury is caused by rapid repetitive motion, the standard is a two-pronged test: (1) the tasks must be repetitive, and

(2) the repetitive motion must be rapid. *Galloway v. Tyson Foods, Inc.*, 2010 Ark. App. 610, 378 S.W.3d 210, citing *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998). As a threshold issue, the tasks must be repetitive, or the rapidity element is not reached. *Id.* Even repetitive tasks and rapid work, standing alone, do not satisfy the definition; the repetitive tasks must be completed rapidly. *Id.*

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

Ark. Code Ann. §11-9-102(4) further provides, in pertinent part:

(E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:

(ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment....

(14)(A) “Major cause” means more than fifty percent (50%) of the cause.

(B) A finding of major cause shall be established according to the preponderance of the evidence[.]

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).



An administrative law judge found in the present matter that the claimant “has satisfied the required burden of proof, by a preponderance of the evidence, that the continued walking and climbing stairs for hours at a time constituted a rapid repetitive work-related injury and was the major cause of the claimant’s injury to both of his feet.” The Full Commission does not affirm this finding. As we have discussed, the claimant’s testimony indicated that he became employed with the respondents, Arkansas Department of Corrections, in about 2008. The claimant was transferred to the respondents’ North Central Unit (Calico Rock) in approximately 2013. The claimant testified that he gradually began experiencing “numbness” and soreness in his feet. The claimant testified that he was “constantly” on his feet climbing stairs and ladders, “doing your rounds and everything involved with it.”

There is no aspect of the claimant’s testimony which can be characterized as describing “rapid repetitive motion” in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(a). The record does not indicate that the claimant’s walking duties were repetitive, or that the alleged repetitive motion was “completed rapidly.” *Galloway, supra*. The claimant’s supervisor, Lt. Chris Brandon, agreed that “Everybody complains of having sore feet. I mean, I have sore feet too.” However, Lt. Brandon did not corroborate the claimant’s contention that his work duties involved rapid

repetitive motion of his feet. Nor were the claimant's duties as a prison guard synonymous with the claimant's duties in *Pearson v. Worksource*, 2011 Ark. App. 751, 387 S.W.2d 274. In *Pearson*, it was held that an employee injured his left great toe as the result of repetitive motion being completed rapidly. The evidence in the present matter does not demonstrate that the claimant's duties as a prison guard required him to move his feet in a repetitive motion that was being completed rapidly.

The claimant began treating with Dr. Steffen on March 17, 2017. The claimant complained of pain in his right posterior heel but did not complain of left foot symptoms. Dr. Steffen's diagnosis included "Achilles tendonitis right." The evidence does not demonstrate that Dr. Steffen's diagnosis or treatment was causally related to the claimant's work duties for the respondents. The claimant requested Family and Medical Leave beginning April 25, 2017. The claimant did not contend that his FMLA request was related to his work duties. Dr. Steffen performed a "plantar fasciotomy" on August 18, 2017. Dr. Steffen diagnosed "Plantar fasciitis, right, and Achilles tendinitis, right." There is no probative evidence of record demonstrating that Dr. Steffen's diagnosis or surgical treatment was causally related to alleged rapid repetitive motion involving the claimant's feet. Nor does the evidence demonstrate that the alleged compensable injury was the "major cause" of the need for treatment.

The parties stipulated that the claimant “reached maximum medical improvement (MMI) on October 12, 2017.” There still had been no indication or contention as late as October 12, 2017 that the claimant had allegedly sustained a compensable injury. The claimant’s testimony indicated that he returned to work for the respondents, but the respondents terminated the claimant’s employment effective October 25, 2017. The claimant’s termination was the result of an alleged policy violation by the claimant, and the record does not show that the claimant’s termination was in any way related to the alleged compensable injury.

The claimant returned to Dr. Steffen on March 12, 2018, complaining of pain in his right heel and numbness in his left foot. We note that the claimant had been absent from the respondents’ workplace since approximately October 25, 2017. Dr. Steffen signed a “TO WHOM IT MAY CONCERN” letter on March 12, 2019. Dr. Steffen opined among other things that the claimant’s duties as a correctional officer required him to “constantly stand and/or walk.” Dr. Steffen stated that the “major cause” of the claimant’s need for treatment arose out of the claimant’s work as a prison guard for the respondents. Dr. Steffen also testified at deposition that the claimant’s tendinitis was causally related to “an overuse-type injury.” Dr. Steffen testified, “His duties on the job contributed to the pain and the Achilles tendinitis due to what he has to do at his job or had to.”

The Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). It is within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, Dr. Steffen's causation opinion is not supported by the record and is entitled to minimal evidentiary weight. The evidence does not demonstrate that the claimant performed rapid and repetitive work duties with his feet while he was employed with the respondents.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury. The claimant did not prove that his alleged injury was "caused by rapid repetitive motion" as is required by Ark. Code Ann. §11-9-102(4)(A)(ii)(a)(Repl. 2012). Nor did the claimant prove that the alleged compensable injury was the "major cause" of his need for treatment, as is required by Ark. Code Ann. §11-9-102(4)(E)(ii)(Repl. 2012). The claimant did not prove that any aspect of the Full Commission's *de novo* review is unconstitutional. See *Hopkins v. Harness Roofing, Inc.*, 2015 Ark. App. 62, 454 S.W.3d 751; *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007); *Stiger v. State Line Tire Serv.*, 72 Ark.

App. 250, 35 S.W.3d 335 (2000). This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

\_\_\_\_\_  
CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite concurs.

CONCURRING OPINION

After my *de novo* review of the entire record, I concur with the majority opinion finding that the claimant did not prove he sustained a compensable injury.

The claimant does not contend that his injuries are identifiable by time and place of occurrence, but that instead, his foot injuries are rapid and repetitive motion injuries. In order to prevail on a rapid, repetitive injury claim, the claimant must prove by a preponderance of the evidence that he sustained an injury causing internal or external harm to the body which arose out of and in the course of their employment and which required medical services or resulted in disability or death; that the injury was caused by rapid repetitive motion; that the injury was the major cause of the

disability or need for treatment; and must establish a compensable injury "by medical evidence supported by "objective findings".

I found the claimant's testimony to be credible and it appears to me that the claimant's work duties may have been the major cause for his need for treatment. However, I do not find that the claimant proved by a preponderance of the evidence that his injuries were caused by rapid and repetitive motion.

The claimant offered the following testimony regarding his work duties:

Q And what was [your] job as a day prison guard?

A Well, you –

Q Tell the Judge about that.

A You spend some time on the tower, and sometimes you – most the time, you're on the floor opening doors, letting inmates in and out, moving them here and there doing – I don't know how to explain, except you just watch them and make sure they get to where they're supposed to be, and – and that they're – you do counts several times a day, and.

...

Q So what was going on with your feet?  
Why were your feet having trouble?  
What were you having to do in your job?

A I was up and down a lot [of] standing on concrete –

Q Up and down what?

A -- concrete stairs, opening doors. Sometimes you're on your feet constantly, and, you know just typical climbing – climbing stairs, climbing ladders up into the tower, just basic [sic] doing your rounds and everything involved with it.

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

...

Q In that job, the last job you had, you basically were just a prison guard, is that right?

A That's right.

Q Break up fights, do things like that? Whatever happened, you needed to have control of the prisoners, right?

A Yes.

Q And then were you constantly on your feet doing that?

A Not constantly but most of the time.

Q How many hours out of a 12-hour day would you be required to be on your feet?

A Well, it's – it would probably be around seven or eight.

It's hard to say because you're up and down and over here and over there, and you're –

Q Are you constantly moving in the job?

A Most of the time, yeah, yeah.

On cross-examination, the claimant admitted that he had a desk and chair where he would sit and “write things down” during his shift.

Based on the aforementioned testimony, I cannot say that the claimant's duties meet the standard of being rapid and repetitive.

Therefore, I am constrained to agree with the majority.

For the foregoing reason, I concur with the majority opinion.

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M. SCOTT WILLHITE, Commissioner