

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge
With Supplemental Opinion)

Injury No.: 04-116721

Employee: Curtis Williams

Employer: City of St. Louis

Insurer: Self-Insured

Date of Accident: November 4, 2004

Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated August 8, 2005, as supplemented herein, and awards no compensation in the above-captioned case.

The dispositive issue is whether or not employee sustained injury due to an accident arising out of and in the course of his employment. The administrative law judge determined that the employee did not sustain injury due to an accident arising out of and in the course of his employment, and the Commission agrees with this determination.

In summary fashion, the employee alleges that while working on a ladder, reaching overhead, he experienced pain down his right leg and up his back. The reporting of this pain occurred November 4, 2004. Employee reported an injury to his right leg and foot while working on a ladder.

Due to the reported pain in the employee's right leg and foot, the employer authorized employee to seek treatment with Dr. Widmer.

The medical report of Dr. Widmer dated November 5, 2004, indicates employee complained about his leg which was injured on November 4, 2004; employee complained that he had been working on a ladder when he got a sharp pain in his right foot; the pain traveled up his right hip; and it was very painful whenever he was working on a ladder. Dr. Widmer further indicates that "the mechanism of injury was he was on a ladder, felt severe pain right foot, going up to his right hip". Employee's past medical history indicated four prior operations concerning the right foot; diabetes with history of a diabetic coma in 1992; and prior diagnosis of diabetic neuropathy.

The assessment of Dr. Widmer was as follows: (1) right foot pain; (2) diabetes; and (3) diabetic neuropathy right more than left lower extremity.

The only additional medical evidence was the narrative medical report of Dr. Krenning dated September 17, 2004 (obviously prior to the alleged instant injury). The medical report of Dr. Krenning chronicles employee's medical problems concerning both his lower extremities for several years and further chronicles his history of diabetes mellitus since 1992.

The diagnosis of Dr. Krenning as of September 17, 2004, was as follows: (1) significant deformity of the right foot, secondary to previous orthopedic problems and surgical corrections, with complications from infection; (2) diabetic neuropathy, which appears to be more significant in the right foot; (3) bilateral hammer toes; (4) history of diabetes mellitus; (5) history of hypertension; and (6) past history of deep venous thrombosis.

Section 287.020.2 RSMo defines accident as follows:

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

Injury is defined pursuant to § 287.020.3 RSMo as follows:

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

(c) It can be fairly traced to the employment as a proximate cause; and

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life;

(3) The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses, and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case except as specifically provided in this chapter be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, nor shall they include death due to natural causes occurring while the worker is at work.

Based on employee's own testimony as well as a complete review of all medical records placed in evidence, the employee did not sustain an injury due to an accident arising out of and in the course of his employment (as so found by the administrative law judge).

Based on the medical records and employee's testimony, the Commission is convinced that employee's work was not a substantial factor in the cause of his resulting medical condition or alleged disability. If anything, employee's work was a mere triggering or precipitating factor and not causative. Furthermore, we agree with the finding of the administrative law judge that there was no compensable accident described by the employee pursuant to the statutory definitions.

As stated by the administrative law judge, employee's symptoms were indistinguishable from his pre-existing condition as well as his ongoing condition of diabetes. There was no credible evidence to determine that employee's alleged accident of November 4, 2004, exacerbated his pre-existing conditions resulting in a compensable injury. The evidence is practically overwhelming that employee's complained of condition was all due to pre-existing medical conditions, which were not exacerbated by the alleged accident. Accordingly, work clearly was not a substantial factor in the cause of his complained of medical condition or any alleged disability. The workplace merely provided a place for employee to be when some complaints of pain surfaced.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued August 8, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 23rd day of September 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

CONCURRING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

CONCURRING OPINION

I agree with the decision of the majority of the Commission to affirm the award and decision of the administrative law judge. I write separately to state that I would affirm the award and decision without supplementation.

John J. Hickey, Member

AWARD

Employee: Curtis Williams

Injury No.: 04-116721

Dependents: N/A

Before the
Division of Workers'
Compensation
Department of Labor and Industrial
N/A Relations of Missouri
Jefferson City, Missouri

Employer: City of St. Louis

Additional Party:

Insurer: Self-Insured

Hearing Date: June 2, 2005

Checked by: JED:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: November 4, 2004 (alleged)
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes

- 8. Did accident or occupational disease arise out of and in the course of the employment? No
- 9. Was claim for compensation filed within time required by Law? Yes
- 10. Was employer insured by above insurer? Yes
- 11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
- 12. Did accident or occupational disease cause death? No Date of death? N/A
- 13. Part(s) of body injured by accident or occupational disease: N/A
- 14. Nature and extent of any permanent disability: N/A
- 15. Compensation paid to-date for temporary disability: None
- 16. Value necessary medical aid paid to date by employer/insurer? \$161.47

Employee: Curtis Williams Injury No.: 04-116721

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate:
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21.Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: N/A

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Curtis Williams

Injury No.: 04-116721

Dependents: N/A

Before the
Division of Workers'
Compensation
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Employer: City of St. Louis

Additional Party: N/A

Insurer: Self-Insured

Checked by: JED

This case involves a disputed injury resulting to Claimant with the reported accident date of November 4, 2004. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is not a party to this claim. Both parties are represented by counsel. This matter proceeds pursuant to Hardship Petition.

Issues for Trial

1. accident;
2. medical causation;
3. liability for unpaid medical expenses;
4. nature and extent of temporary total disability.

FINDINGS OF FACT

Dispositive Evidence

1. Claimant reported the occurrence of excruciating pain in the right foot while on a ladder working overhead, repairing signage as is his habit as an in-house electrician, when he experienced right lower extremity pain on the reported accident date (Exhibit 1).
2. Claimant stated he could not recall if he filled-out the Report of Injury (Exhibit 1). The signature [of Employer's agent] appears to be a different handwriting than the entries in the body of the Report.
3. The Report of Injury contains no accident descriptions but, rather, only the work assignment and activity; how the accident occurred is blank (Exhibit 1).
4. Claimant affirmed questions on direct examination that an "accident" occurred on the reported accident date.

5. Claimant first treated his reported injury the next day per Employer and gave a patient history of "I had been working on a ladder when I got a sharp pain in my right foot. The pain traveled up my right hip, very painful when ever I work on a ladder." No other treatment followed per Employer.
6. Claimant stated he next treated his reported injury in January 2005 through his PCP (primary care physician).
7. Claimant offered three medical records documents from April and May 2005 each of which was either off-work slips or work restriction slips.
8. Claimant was treated and prescribed corrective work boots for right foot symptoms prior to the reported injury relative to advance diabetes and its sequela (Exhibit 5). Claimant's right foot was previously operated multiple times.
9. Claimant's testimony was unconvincing. His testimony was insistent and frequently self-serving. His testimony was uncorroborated with the contemporaneous medical treatment records (Exhibit 4).

RULINGS OF LAW

Compensability:
Accident and Medical Compensation

1. Claimant's account at trial of the reported injury lacked an accident mechanism; his responses to leading questions regarding the occurrence of an accident are not substantial or credible evidence of the occurrence of an accident.
2. No medical evidence was offered in evidence that tend to prove the occurrence of accident or corroborate Claimant's responses to the leading questions regarding the occurrence of an accident.
3. None of the medical records documents attached to Claimant's Hardship Petition contained accident history or other notes that may tend to prove the occurrence of an accident or acute pathology.
4. Claimant's right lower extremity symptoms are indistinguishable in the available evidence from the pre-existing and ongoing condition of advanced diabetes.
5. Since Claimant stipulated that he received no "compensation" from Employer, and presented no evidence contrary to same, it must be concluded, *per se*, that Claimant improperly invoked the extraordinary remedy for accelerated setting and disposition under Section 287.203 RSMo (2000). No discernible prejudice inures to Employer.

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Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain his burden of proof. Claim denied. The other issues are moot.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director

