

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F301230

SAMUEL BEATTY, Employee

CLAIMANT

USA TRUCK, INC., Self-Insured Employer

RESPONDENT

OPINION FILED AUGUST 1, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by J. RODNEY MILLS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On July 7, 2003, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on April 30, 2003, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer existed between the parties on January 1, 2003.
3. The claimant was earning sufficient wages to entitle him to compensation at the maximum weekly rates of \$440.00 for total disability benefits and \$330.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability.
2. Temporary total disability benefits from January 20, 2003 through a date yet to be determined.

3. Medical.
4. Attorney fee.
5. Notice.

At the time of the hearing the claimant had returned to work for respondent on April 16, 2003, and as a result modified his claim for temporary total disability benefits to include the period of January 22, 2003 through April 15, 2003.

The claimant's contentions as set forth in his pre-hearing questionnaire are as follows: "The claimant sustained an injury to his left knee when he slipped on ice and snow on the steps of his tractor causing him to fall to the ground."

The respondent's contentions as set forth in its pre-hearing questionnaire are as follows: "This claim is not compensable. The alleged injuries for which the claimant now seeks workers' compensation benefits did not arise out of or in the course and scope of his employment for the respondent. The medical treatment sought by the claimant is not authorized, reasonable, and/or necessary as a result of a compensable injury. No compensable event is the major cause of the claimant's alleged injury or need for medical treatment. The alleged condition for which the claimant now seeks benefits, if it in fact exists, was pre-existing and/or degenerative in nature and did not arise out of a compensable event. In the alternative, the respondent states that if the alleged condition for which the claimant now seeks benefits is found to be compensable, the claimant did not timely report the incident to the respondent, and the claimant is not entitled to any benefits or medical treatment incurred by the claimant prior to reporting the alleged incident on January 30, 2003."

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 30, 2003, and contained in a pre-hearing order filed that date, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his knee while employed by respondent on January 1, 2003.

3. Claimant failed to provide notice of his compensable injury to respondent until January 30, 2003. Therefore, pursuant to A.C.A. §11-9-701, respondent is not liable for payment of disability benefits, medical benefits, or other benefits prior to that date.

4. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left knee injury beginning January 30, 2003.

5. Claimant is entitled to temporary total disability benefits beginning January 30, 2003, and continuing through April 15, 2003.

6. Respondent has controverted claimant's entitlement to temporary total disability benefits.

### FACTUAL BACKGROUND

The claimant is a 59-year-old man who began working for the respondent as a long haul truck driver on May 5, 2000. On January 1, 2003, the claimant was in the State of New York to deliver a load. Claimant testified that ice and snow were present. Claimant testified that while he was getting out of his truck to read a sign which was covered in snow he slipped on ice and snow on his truck step causing him to fall to the ground and injure his left knee. Claimant continued his job responsibilities as a truck driver until January 20, 2003. Claimant testified that sitting in his truck and driving did not bother his knee, but

that he did have problems with his knee when he walked. He also testified that he had trouble climbing into the cab of his truck. Despite this incident, claimant did not report a work-related injury or a need to seek medical attention to the respondent on the date it occurred or for several weeks thereafter.

Claimant eventually sought medical treatment from Dr. Williams on January 22, 2003. Dr. Williams ordered an MRI scan which revealed a possible tear in claimant's knee and referred claimant to Dr. Morris, an orthopaedic surgeon. Claimant eventually underwent a surgical repair of his knee from Dr. Morris. Claimant was released to return to work at full duty on April 16, 2003.

Claimant has filed this claim contending that he suffered a compensable injury to his left knee on January 1, 2003. He seeks payment of medical benefits, temporary total disability benefits from January 22, 2003 through April 15, 2003, and a controverted attorney fee.

### ADJUDICATION

The claimant contends that he suffered a compensable injury to his left knee when he slipped and fell on ice and snow on January 1, 2003. Thus, claimant's claim is for a specific incident identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing

the injury;

(4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury.

Initially, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury which arose out of and in the course of his employment with respondent and that his injury was the result of a specific incident identifiable by time and place of occurrence. Here, claimant testified that he suffered the injury to his knee while he was getting out of his truck to look at a snow covered sign on January 1, 2003. Claimant testified that he needed to see the sign in order to know where he was going to unload his truck.

The primary evidence contradicting claimant's claim is his failure to report this incident to the respondent until almost one month later. The evidence indicates that claimant could contact his dispatcher by telephone. In addition, claimant's cab was equipped with a Qualcomm system which allowed him to be in constant contact with the respondent. Claimant testified that he did not initially report the injury to the respondent because he did not believe he needed medical attention. By January 12 and 13 claimant believed that he needed medical attention and in fact attempted to make an appointment to see a physician at that time but was unable to do so. On January 14, 2003, the claimant did report knee pain to his dispatcher, but did not specifically state that he had injured his knee as a result of a work-related injury. Claimant testified that he believed this was obvious because he had been "under a load" since just after Christmas in December 2002.

The next week claimant did get an appointment with Dr. Williams on January 22,

2003. After an MRI scan was ordered, claimant did report the injury to the respondent.

Obviously, a claimant's failure to promptly report an injury is an important factor which can be considered in determining whether a claimant has met their burden of proving a compensable injury. However, notice of an injury is only a factor to be considered, it is not controlling. In this particular case, while claimant obviously failed to promptly report his injury, I nevertheless find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury which arose out of and in the course of his employment with respondent. Specifically, after having had the opportunity to view the claimant's demeanor at the time of the hearing, I believe that the claimant is a credible witness and therefore find his testimony regarding the injury to be credible as well. In reaching this conclusion, I first note that claimant testified that he was not aware that he was to report injuries immediately. Furthermore, I note that the medical reports contained a history of injury consistent with claimant's testimony. I also note that claimant testified that he had no prior knee problems and there is no evidence to the contrary.

Accordingly, for the foregoing reasons, I find the claimant to be a credible witness and therefore find that his testimony is credible as well. Therefore, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury which arose out of and in the course of his employment with respondent on January 1, 2003.

I also find that claimant has met his burden of proving by a preponderance of the evidence that the injury caused internal physical harm to his body which required medical services and resulted in disability and that claimant has offered medical evidence supported by objective findings establishing an injury. Here, an MRI scan was performed on the claimant's knee on January 28, 2003. That MRI scan revealed a posterior horn tear of the medial and lateral meniscus. As a result, claimant underwent a surgical

procedure to repair those tears which was performed by Dr. Morris. I find that this evidence satisfies the remaining elements of compensability.

With respect to respondent's argument that the medical treatment sought by claimant was not authorized, reasonable and/or necessary as a result of his compensable injury, I find no merit to this argument. Having controverted compensability of this claim, claimant was free to seek medical treatment from any physician. Furthermore, I find that the medical treatment claimant received was reasonable and necessary as a result of his compensable injury. In addition, I find no merit to respondent's contention that claimant's condition is the result of a pre-existing and/or degenerative condition. There is no evidence that the torn medial and lateral meniscus pre-existed January 1, 2003. Finally, since claimant's contention is for a specific injury identifiable by time and place of occurrence, claimant does not have the burden of proving by a preponderance of the evidence that the compensable injury was the major cause of his disability or need for medical treatment. *Farmland Insurance Company v. Dubois*, 54 Ark. App. 141, 923 S.W. 2d 883 (1996).

Accordingly, for the foregoing reasons, I find that claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left knee while working for respondent on January 1, 2003.

The next issue for consideration involves respondent's contention that it did not have notice of the claimant's injury until January 30, 2003; therefore, it is not liable for any compensation benefits prior to that time. The issue of notice is codified at A.C.A. §11-9-701. Subsection (a)(1) of that statute states that unless an injury renders the employee physically or mentally unable to do so or the injury is made known to the employer immediately after it occurs, the employee shall report the injury to his employer. If the employee does not report the injury the employer is not responsible for compensation benefits prior to the reporting. Subsection (b)(1) states that failure to give notice can be excused if the employer had knowledge of the injury; if the employee had no knowledge

that the condition arose out of and in the course of employment; or if the Commission excuses the failure on grounds that for some satisfactory reason notice could not be given.

After reviewing the evidence in this case, I find that claimant did not provide notice of his injury to the respondent until January 30, 2003. Therefore, respondent is not liable for payment of any compensation benefits prior to that date.

Here, claimant admittedly testified that he did not report the specific injury to his employer until after he had sought medical treatment. In fact, it does not appear that claimant reported the injury until January 30, 2003. Claimant testified that after he had sought medical treatment and had discovered the extent of his injury he contacted his dispatcher by telephone and was transferred to Brent Dorrrough. Dorrrough is the supervisor for risk management with the respondent. Dorrrough testified at the hearing that he handles respondent's workers' compensation claims. Dorrrough testified that he did not learn of the claimant's potential claim until January 30, 2003, when a phone call from the claimant was transferred to him by claimant's dispatcher.

Furthermore, I do not find that the claimant's failure to give notice can be excused for any other reasons set forth in subsection (b)(1). First, the respondent did not have knowledge of the claimant's injury. Second, claimant did have knowledge that his knee injury had arisen out of and in the course of his employment with the respondent when he slipped and fell on January 1, 2003. Finally, I find no satisfactory reason that notice could not have been given. After January 1, 2003, claimant had telephone conversations with his dispatcher. Furthermore, claimant had in his cab a Qualcomm system which would have allowed him to report a work-related injury. Despite this claimant did not report a work-related injury.

Based upon the foregoing, I find that claimant did not provide notice of his work-related injury to the respondent until January 30, 2003. Therefore, pursuant to A.C.A. §11-9-701(a)(1), respondent is not liable for payment of any compensation benefits prior

to that date.

Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury beginning on January 30, 2003. Respondent is not liable for payment of medical treatment provided prior to that date due to claimant's failure to provide notice. At claimant's deposition he testified that a portion of his medical benefits had been paid for by his group health provider. Pursuant to A.C.A. §11-9-411, respondent is entitled to a credit for these benefits.

The final issue for consideration involves claimant's entitlement to temporary total disability benefits. Claimant's injury is a scheduled injury; therefore, he is entitled to temporary total disability benefits during his healing period or until he returns to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Here, based upon the medical evidence of record, I find that claimant remained within his healing period which began when he first sought medical treatment from Dr. Williams on January 22, 2003. Furthermore, claimant did not work for the respondent subsequent to January 20, 2003. Claimant was released by Dr. Morris to return to work without restriction as of April 16, 2003. Claimant testified that he did in fact return to work for the respondent as of that date and continues to work for the respondent as a truck driver. Based upon this evidence, I find that claimant is entitled to temporary total disability benefits beginning January 30, 2003, the date he gave notice of his injury to respondent, and continuing through April 15, 2003, the day prior to claimant's return to work for respondent on April 16, 2003.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the

temporary total disability benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he suffered a compensable injury to his left knee while employed by respondent on January 1, 2003. Claimant failed to provide notice of his compensable injury to the respondent until January 30, 2003. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury beginning January 30, 2003. Claimant is entitled to temporary total disability benefits beginning January 30, 2003, the date he provided notice to respondent, and continuing through April 15, 2003.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is hereby awarded an attorney fee in the amount of 25% of the indemnity benefits payable to the claimant. This fee is to be paid one-half by the carrier and one-half by the claimant. The respondents are to withhold the claimant's portion of the attorney's fee from the claimant's award and to pay the attorney's fee directly to the claimant's attorney.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE