

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F305006

BECKY BEDELL, Employee	CLAIMANT
NORPORT REHAB CENTER, Employer	RESPONDENT
ROYAL INDEMNITY COMPANY, Carrier	RESPONDENT

OPINION FILED OCTOBER 21, 2003

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by ANDREW IVEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 24, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 16, 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 or about October 27, 2002, December 1, 2002, and at all other relevant times.
3. The claimant sustained a compensable injury to her right knee on October 27, 2002.

At the time of the hearing the parties agreed to stipulate that claimant earned a sufficient average weekly wage to entitle her to compensation at the rate of \$217.00 per week for temporary total disability benefits and \$163.00 per week for permanent partial disability benefits.

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

1. Compensability of injury to claimant's left knee.
2. Medical and temporary total disability benefits related to claimant's left knee injury.
3. Attorney fee.

The claimant contends she is entitled to temporary total disability and medical benefits as well as an attorney fee as the result of falling over a trash barrel in October 2002 injuring both knees.

The respondents contend the claimant is not entitled to the requested benefits because claimant cannot establish that she sustained accidental injuries identifiable by time and place of occurrence causing internal or external harm to her left knee which arose out of and in the course of her employment with respondent employer on or about October 27, 2002.

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 July 16, 2003, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant was earning a sufficient average weekly wage to entitle her to compensation at the weekly rates of \$217.00 for temporary total disability benefits and \$163.00 for permanent partial disability benefits is likewise accepted as fact.
3. Claimant has failed to prove by a preponderance of the evidence that she

suffered a compensable injury to her left knee while employed by respondent.

FACTUAL BACKGROUND

The claimant is a 61 year old woman who worked in the respondent's dietary department. On October 27, 2002, claimant was wheeling a barrel of trash outside when one of the wheels on the barrel got caught in a rut or hole causing it and the claimant to fall over.

Claimant was taken to the emergency room on the date of injury complaining of right knee pain, right hand pain, and an injury to her forehead. She subsequently came under the care of Dr. Haws who treated claimant on several occasions before releasing her to return to work without restrictions on December 19, 2002. Thereafter, claimant returned to Dr. Haws in April 2003 complaining of left knee pain. Claimant has also been evaluated by Dr. Christopher Arnold for her left knee condition.

The respondents accepted as compensable an injury to the claimant's right knee resulting from the injury on October 27, 2002. Claimant has filed this claim contending that she also suffered a compensable injury to her left knee as a result of the incident on October 27. Claimant seeks payment of medical and temporary total disability benefits related to her left knee injury as well as a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her left knee when she fell while working for respondent on October 27, 2002. Claimant's claim is for a specific injury 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 failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee which arose out of and in the course of her employment with respondent.

As previously noted, claimant was taken to the emergency room on the date of her injury, October 27, 2002. The emergency room report indicates that on that date claimant was complaining of right knee pain, pain in her right hand and right forehead. Despite claimant's testimony that she also was complaining of left knee pain on that date, the emergency room report does not mention any complaints of left knee pain.

Claimant subsequently came under the care of Dr. Haws whose report of October 31, 2002, reflects claimant giving a history of a fall and injury to her right knee, right hand, and forehead. Dr. Haws' medical report does not reflect claimant complaining of any problems with her left knee. To the contrary, Dr. Haws' report indicates that claimant denied any other specific complaints or problems. Claimant next returned to Dr. Haws on November 7, 2002, and again there is no mention of left knee complaints, only right knee complaints.

Claimant was next evaluated by Dr. Haws on November 14, 2002. Dr. Haws' medical report of that date does not indicate that claimant was complaining of left knee

pain, but to the contrary his report indicates that claimant's left knee was uninjured.

Strength has improved on flexion and extension at the knee, though again, not quite equal to the uninjured left side. (Emphasis added.)

On December 19, 2002, Dr. Haws noted:

She presents today stating she has no complaint or problem, her injuries have resolved.

Again, Dr. Haws medical report makes no mention of any left knee complaint and notes that claimant's right knee problems have resolved.

Claimant did not return to Dr. Haws again until April 25, 2003, at which time she was complaining of left knee pain which she related to the injury on October 27, 2002. Dr. Haws in his medical report of that date noted that a review of the medical records revealed that claimant had not complained of left knee pain prior to this date. Dr. Haws also indicated that he did not recall from memory claimant complaining of any pain or discomfort in the left knee and that this belief was borne out by the medical records and the emergency room records.

Claimant was subsequently evaluated by Dr. Chris Arnold on May 1, 2003, at which time claimant gave Dr. Arnold a history of having fallen on October 27, 2002, and injuring both knees. Interestingly, claimant informed Dr. Arnold that she had been in constant pain since October 27 in both knees with pain greater in the left knee than the right. This history given to Dr. Arnold is not supported by the prior medical records and in fact is contrary to claimant's own testimony at the hearing that at the time of her initial evaluation her right knee pain was greater than her left knee pain.

Claimant contended at the hearing that she has had left knee pain since the time of the fall on October 27, 2002, and that she complained of left knee pain to her medical providers. However, I believe it is extremely important to note that claimant herself

completed Form N on October 28, 2002, the day after her fall. When describing the parts of her body that had been injured, claimant mentioned only a bump on the head, right hand and wrist pain, and right knee. Claimant did not mention any injury to her left knee at that time.

In short, claimant has the burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee which arose out of and in the course of her employment with respondent. I find based upon the evidence presented that claimant has failed to meet her burden of proof. First, the emergency room report dated October 27, the date of claimant's injury, fails to mention any complaints of left knee pain. Subsequent multiple visits to Dr. Haws also fail to mention any complaints of left knee pain. To the contrary, Dr. Haws' medical reports indicates that claimant's left side was uninjured. It was not until April 25, 2003, that claimant first made complaints of left knee pain to Dr. Haws. Claimant also made these complaints to Dr. Arnold on May 1, 2003; however, this was six months after the injury. Finally, I note that claimant completed Form N on October 28, 2002, the day after her injury, and did not indicate that she had injured her left knee. Claimant mentioned only her head, right hand, and right knee.

Accordingly, for the foregoing reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee while employed by respondent on October 27, 2002.

ORDER

_____ Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE