

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210261

MARY L. COATES,  
EMPLOYEE

CLAIMANT

SAJ DISTRIBUTORS D/B/A USA DRUG,  
EMPLOYER

RESPONDENT

TRANSCONTINENTAL INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED AUGUST 22, 2003**

Hearing conducted before ADMINISTRATIVE LAW JUDGE, MARK CHURCHWELL at Little Rock, Pulaski County, Arkansas.

The claimant was represented by MR. ZAN DAVIS, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by MR. FRANK NEWELL, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on July 22, 2003 in Little Rock, Arkansas. A prehearing order was entered in this case on April 17, 2003. This prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employer-employee-carrier relationship existed between the parties on all relevant dates.

3. This claim has been controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable specific incident injury to her right knee on or about July 29, 2002.

2. Whether the claimant is entitled to reasonably necessary medical treatment.

3. Whether the claimant is entitled to temporary total disability benefits from August 9, 2002 to a date yet to be determined.

4. Whether the claimant is entitled to a controverted attorney's fee.

At the start of the hearing, the parties also stipulated that the claimant's average weekly wage was \$162.98 which would translate into a compensation rate of \$109.00 per week for temporary total disability compensation. At the start of the hearing, the respondents' attorney raised a notice defense for the first time and also argued for the first time that the claimant sustained an

idiopathic injury. I advised the parties at the start of the hearing that I would rule later as to whether or not these two issues were timely raised by the respondents at the start of the hearing. However, later in the hearing the respondents specifically withdrew their notice defense. In addition, after conducting a review of the entire record, and for the reasons discussed herein, I find that the respondents' idiopathic fall contention as clarified during the hearing, is not supported by the preponderance of the evidence. Consequently, I find that the question of whether or not this contention was timely raised is essentially moot.

### **DISCUSSION**

#### **COMPENSABILITY AND MEDICAL TREATMENT LIABILITY**

The claimant became employed by USA Drug in approximately May of 2001. On July 29, 2002, the claimant was working as a checker. There is no dispute that she fell at work that day. The claimant asserts that her fall was caused by getting her left foot wedged in a swinging door, and that as a result of the fall, she injured her right knee.

The store manager at the time, Christopher Coates (no relation to the claimant) testified that he recalled that paperwork reporting the injury was filled out on July 29, 2002, but that it was later determined that the wrong paperwork was completed, so that the claimant completed the appropriate paperwork three days later on August 1, 2002. Although Mr. Coates initially testified that he seemed to recall the claimant's only two complaints after the fall being that she had hurt her feelings and hurt her wrist, Mr. Coates later advised me under my questioning that he in fact had no personal recollection of his conversations with the claimant at the time of the injury beyond the documentation which has been submitted into the record as Joint Exhibit No. 1.

The respondents' attorney clarified his idiopathic injury defense as following at the close of the hearing:

Judge, if you believe this lady's testimony that the door closed on her foot and knocked her down, then we don't have an idiopathic injury defense. If you believe that she doesn't actually know, but as she has reconstructed the accident, she believes that the door must have hit her foot and that must be the reason she fell down, and if you further believe that she has balance problems for which she was receiving care and fell because of those, then our idiopathic defense wins and there's no compensable injury.

For the following reasons, I find that the preponderance of the credible evidence establishes that the claimant's fall was caused by getting her foot wedged in a swinging door, rather than by a bout of dizziness or balance problems as the respondents suggest.

First, as I interpret the claimant's medical records, it appears to me that the claimant did in fact experience some period of transient dizziness symptoms in approximately February 2001. However, I gather from the contemporaneous medical reports and from the claimants' credible testimony that these symptoms in early 2001 came under control rather quickly and the only reference I noted to dizziness in the claimant's 2002 records was a somewhat nebulous reference to a several month history of intermittent nausea, dizziness, gassy feelings and low grade fever recorded by Dr. Mitchell on August 5, 2002.

Second, I am persuaded not only by the claimant's credible hearing testimony as to "what happened", but I also note that her hearing testimony about getting her foot wedged in a swinging door to cause a fall is consistent with the reports of her medical providers after that date as to the cause of her fall and her injury.

Third, and more importantly to me, I note with interest that the Form AR-N and the First Report of Injury completed on August 1, 2002 each refer to the back of the claimant's shoe being caught in a swinging door which she could not get free. While the First Report of Injury, apparently in Mr. Coates' handwriting makes no specific reference to a fall, the claimant's description in the Form AR-N indicates at different points that she slapped the concrete and that she hit the floor. I note that the First Report of Injury indicates that the claimant bruised her knee, and I note that the form AR-N indicates that the claimant hurt her left knee, right arm, neck, and her feelings. While I acknowledge that neither the First Report of Injury or the Form AR-N make any specific reference of injury to the right knee, I find credible, and certainly find reasonable, the claimant's hearing testimony that she hit her right knee as well as her left knee during the course of the fall. I likewise find credible and reasonable the claimant's testimony that she did not appreciate the extent of her knee problems until approximately two weeks after the fall, since she spent most of the interim two week period on the couch recovering from the flu.

To the extent that the respondents suggest that the claimant never actually got her foot wedged in the swinging door, but instead imagined this incident occurring as she reconstructed "what happened", I again find no merit for this argument in the record for the following reasons. First, I note that the claimant's AR-N listed Katie Hopson as a witness who heard the claimant fall and came over, and the respondents presented no evidence from either Mr. Coates (who did testify), or from Ms. Hopson (who did not testify) or through the most contemporaneous reports supposedly prepared on July 29, 2002 (which were not offered into evidence) which might contradict the claimant's hearing testimony, the First Report of Injury in the record, the Form AR-N in the record, and the claimant's medical reports in the record regarding how the fall occurred. Moreover, I point out the illogic in suggesting that the claimant would make up a gate swinging incident to which to attribute her fall under circumstances where the claimant initially thought she sustained insufficient trauma to warrant medical treatment. I find it just as illogical that the claimant would intentionally lie and attribute what initially appeared to be a relatively minor fall at work to an imaginary gate swinging incident had she in fact had any

reason to suspect that the fall might be caused by a serious idiopathic medical condition such as dizziness or a loss of balance type of episode, as the respondents suggest, but have in no way established.

I further note that the respondents conceded during the course of the hearing that there is no question regarding the presence of objective findings of right knee injury in the record. I agree. In addition, I note that Dr. Bowen diagnosed the claimant with post traumatic patellar contusion syndrome as a result of the fall that occurred at work on July 29, 2002, and that Dr. Bowen performed surgery for her right knee condition. Therefore, not only has the claimant established by a preponderance of the evidence that the door swinging incident in fact occurred and caused her fall, she has also established by a preponderance of the credible evidence that her right knee injury occurred as a result of that fall, and she has established that her right knee injury which required surgery is supported by objective medical findings. I therefore find that the claimant is entitled to all medical treatment reasonable and necessary for the treatment of her compensable knee injury including,

but not limited to, her knee related visits to St. Vincent Family Clinic, and her treatment and surgery performed by Dr. Bowen.

#### **TEMPORARY TOTAL DISABILITY COMPENSATION**

The claimant's work related injury at issue is a right knee injury, therefore the claimant's injury is considered a scheduled injury. See Ark. Code Ann. §11-9-521(a). For a scheduled injury, a claimant is entitled to temporary total disability benefits until her healing period ends or until she returns to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2002). The healing period continues until the injured employee is as far restored as the permanent character of the injury will permit. The healing period ends once the underlying condition has become stable and when nothing further in the way of medical treatment will improve the permanent character of the injury. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The persistence of pain is not sufficient, by itself, to extend the healing period provided that the underlying condition has stabilized. Id.

In the present case, I find that the preponderance of the evidence establishes that the claimant returned to work on the second and third days following her injury (July 31, 2002 and August 1, 2002), but that the claimant did not thereafter return to work again after that short failed return to work. I gather that the claimant does not seek disability benefits until August 9, 2002, because she was admittedly off work recovering from the flu until approximately that date, when she then began to move around and appreciate the severity of her knee condition.

With regard to her healing period, I note that the claimant did not undergo surgery until January 6, 2003. On January 7, 2003, the claimant returned to Dr. Bowen who indicated that the claimant would follow up in a week to ten days when he would remove her surgical sutures, and when hopefully her bruising and effusion would subside. If the claimant attended that scheduled appointment, I note that there is no record of this medical report in evidence.

Furthermore, the claimant's testimony gives no indication as to when, if ever after January 7, 2003 that she ever presented again to Dr. Bowen or to any other physician for her knee prior to the hearing held on July 22, 2003, some six months after arthroscopic surgery. I note

the claimant's testimony that she had a follow-up appointment scheduled with Dr. Bowen for July 29, 2003, but I also note the claimant's testimony under cross-examination that her knee had not improved further in the month or two months prior to the hearing held on July 22, 2003. Finally, I note from Dr. Bowen's surgical report that the procedures he performed included a partial medial meniscectomy, extensive chondroplasty of the medial femoral condyle, chondroplasty of the patella and trochlear groove, and removal of a patellar osteophyte.

Given the lack of any evidence in the record indicating what treatment, if any, that the claimant underwent after having her sutures removed, and given the lack of any evidence indicating that the permanent nature of the claimant's knee injury might be expected to improve further after the sutures were removed, or did in fact improve any further after Dr. Bowen was scheduled to remove the sutures, I am constrained to find that the preponderance of the evidence establishes that the claimant's healing period ended on January 17, 2003 some ten days after that visit when Dr. Bowen's January 7, 2003 report indicates that the claimant's surgical stitches would be removed and when her effusion would have hopefully subsided.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer-employee-carrier relationship existed between the parties on all relevant dates.
3. This claim has been controverted in its entirety.
4. The claimant's average weekly wage was \$162.98 which would translate into a compensation rate of \$109.00 per week for temporary total disability compensation.
5. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable right knee injury on July 29, 2002.
6. The claimant has established by a preponderance of the credible evidence that she is entitled to reasonably necessary medical treatment for her compensable right knee injury.
7. The preponderance of the credible evidence establishes that the claimant is entitled to temporary total disability compensation from August 9, 2002 and continuing through January 17, 2003.

8. The claimant's attorney's fee shall be 25% of the indemnity benefits awarded herein.

**AWARD**

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge