

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F301871

MARIA CRUZ, Employee	CLAIMANT
WORKSOURCE, Employer	RESPONDENT
WAUSAU INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 8, 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 JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On August 13, 2003, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on April 16, 2003, and a pre-hearing order was filed on April 17, 2003. 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-carrier existed among the parties on October 15, 2003.
3. The claimant was earning an average weekly wage of \$243.75 which would entitle her to compensation at the rate of \$163.00 per week for total disability benefits.

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

1. Compensability of injury to claimant's right knee.
2. Temporary total disability benefits from October 15, 2002 through a date yet to be determined.
3. Medical.

#### 4. Attorney fee.

During the hearing claimant modified her contention with regard to temporary total disability benefits. Claimant contends that she is entitled to temporary total disability benefits from October 16, 2002 through October 30, 2002. Claimant also contends that she is entitled to temporary total disability benefits beginning January 8, 2003, and continuing through a date yet to be determined with respondent given credit for unemployment compensation benefits received by the claimant.

The claimant contends she was injured on October 15, 2002 when she was washing the floor with a water hose and slipped into the drain. Her left foot went into the drain and she hit the concrete with her right knee. She contends she is entitled to temporary total disability benefits from October 16, 2002 through October 30, 2002, and again from January 8, 2003 through a date yet to be determined, medical expenses, and an attorney fee.

The respondents contend the claimant did not sustain a compensable injury to her right knee on October 15, 2002, the only date the claimant worked for the respondent employer.

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 witness and to observe her 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 16, 2003, and contained in a pre-hearing order filed April 17, 2003, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she

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

### FACTUAL BACKGROUND

The claimant is a 43-year-old woman who completed the third grade in El Salvador. Claimant came to the United States and to Northwest Arkansas approximately ten years ago. During Allen Canning Company's seasonal work claimant has been sent there to work by temporary agencies. Most recently, claimant was sent by the respondent to work at Allen Canning Company. Claimant's first date of work at Allen Canning Company was October 15, 2002. Claimant contends that on that date she fell and injured her right knee. Claimant testified that following this incident she was taken to the hospital in Siloam Springs by the respondent. Subsequently, claimant was evaluated by Dr. Green and Dr. Beasley. Claimant has also been evaluated by Dr. Chris Arnold at the request of her attorney.

Claimant has filed this claim contending that she suffered a compensable injury to her right knee while working for respondent on October 15, 2002. She seeks payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

### ADJUDICATION

Claimant contends that she suffered a compensable injury to her right knee when she fell on October 15, 2002. Therefore, 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. Specifically, I find that claimant has failed to offer objective findings establishing a compensable injury.

As previously noted, claimant was taken to the hospital in Siloam Springs on October 15, 2002. As a result of claimant's knee complaints, x-rays of her right knee were taken. The x-ray report dated October 16, 2002 indicates that claimant's right knee was normal. Subsequent to that date the claimant was evaluated by Drs. Green and Beasley and an MRI scan of the claimant's right knee was performed. This scan occurred on October 23, 2002. Significantly, the MRI report states:

Images reveal no evidence of bony abnormality. The medial and lateral collateral ligaments are normal. Anterior and posterior cruciate ligaments are normal. There is no evidence of a meniscal injury. There is no evidence of effusion. The popliteal fossa is normal.

**IMPRESSION: NORMAL STUDY.**

Thus, as of October 23, 2002, two objective tests had been performed on the claimant's knee in the form of x-rays and an MRI scan. These tests were normal showing no abnormalities. Significantly, the MRI test showed no evidence of effusion or swelling.

I also note that the medical report from Drs. Beasley and Green dated October 24, 2002, likewise reflects no swelling in claimant's knee.

It was not until November 14, 2002 that Dr. Beasley noted some effusion in the claimant's right knee. This was one month after the claimant's alleged injury and after the MRI scan had revealed no effusion.

Based upon objective testing in the form of the MRI scan which revealed no effusion on October 23, 2002, the medical report of Drs. Beasley and Green dated October 24, 2002 revealing no swelling, and the fact that effusion was not noted in the claimant's right knee until November 14, 2002, one month after the claimant's alleged injury, I find that the effusion does not constitute objective evidence establishing an injury to claimant's right knee on October 15, 2002.

In finding that claimant has failed to meet her burden of proof, I have also considered the fact that the medical report dated October 24, 2002, indicates that Dr. Green believed the claimant had a bruising of her knee. This is also reflected in Form AR-3 dated October 24, 2002 diagnosing claimant's condition as a contusion of the right knee. All bruises and contusions are not visible. Obviously, if the physicians observed bruising this would be considered an objective finding. However, my review of the evidence in this case reveals that Drs. Green and Beasley were simply diagnosing the claimant's condition as a bruise based upon a lack of any other explanation. The medical report and form dated October 24, 2002, states that the bruising or contusion is a diagnosis and does not indicate that bruising or a contusion were actually observed by claimant's treating physicians. It should also be noted that this diagnosis was made one and a half months after the claimant's alleged injury and no medical reports have been offered indicating that bruising was observed. A diagnosis without objective findings is insufficient.

In short, in order to prove a compensable injury, claimant has the burden of establishing an injury with medical evidence supported by objective findings. Here, objective tests in the form of x-rays and an MRI scan were normal with no evidence of effusion. Effusion in the claimant's right knee was not noted until November 14, 2002, one

month after the claimant's alleged injury. Furthermore, the physician's diagnosis of a contusion of the claimant's right knee does not appear to be the result of an actual observation of bruising as opposed to a mere diagnosis. The medical records do not reflect a history of claimant's physicians observing bruising of the claimant's knee. A diagnosis without objective findings is insufficient to meet claimant's burden of proof.

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right knee while employed by the respondent. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE