

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209686

EDWIN DEFFENBAUGH	CLAIMANT
TEC THE EMPLOYMENT CO., INC.	RESPONDENT
LIBERTY MUTUAL INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 20, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant not represent by counsel.

Respondents represented by JAMES ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 11, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 21, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On June 19, 2002, the relationship of employee-employer-carrier existed between the parties.

3. Compensation rate of \$251.00 temporary total disability and \$188.00 permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensable injury of claimant's right knee.
2. Medical expenses.

In regard to the foregoing issues the claimant contends that:

1. He injured his right knee on June 19, 2002 while working for the respondent and is entitled to medical treatment.

In regard to the foregoing issues the respondents contend that:

1. Claimant did not injure his right knee while working on June 19, 2002, and is not entitled to benefits.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The respondents submitted medical evidence marked Respondents' Exhibit No. 1 and non-medical evidence marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was working for Lifttruck but in fact was an employee of the respondent. The claimant testified that, in his opinion, he was hired by Lifttruck and then three days later was transferred over to the respondent as an employee. The claimant testified that he was never given any type of orientation by the respondent. The claimant testified that he began working for the respondent on or about May 13, 2002.

The claimant testified that sometime between Monday and Thursday of the week of June 19, 2002, he was kneeling down in a catcher's position working on a Yale forklift. The claimant

testified that while he was kneeling down working on a tire, he felt a real sharp pain in his right knee. The claimant testified that he fell forward to release as much pressure and pain as he could. The claimant testified that when he went home that evening, his mother put cold packs on his knee. The claimant testified that he reported this injury to Steve Johnson on Thursday evening within the week of his injury. The claimant testified that he talked to "Rick" the next day and told him that because his knee was giving him so much trouble, he was going to have to see how it did over the weekend and if it was not better he would have to take off. The claimant testified that on Monday morning he called into Lifttruck and reported to them that he would need to take off for five days.

The claimant testified that there was some uncertainty as to whether the respondent was going to send him to the doctor but they did send out someone to take his deposition approximately two weeks after the event. The claimant testified that he did go to a medical provider but is unsure if there is a report of this visit in the record.

The claimant testified that due to the unusual way in which he was hired by the respondent, he was never given the opportunity of going through any type of orientation. The claimant testified that if he had been properly informed through an orientation when he was changed over to the respondent as an employer, this situation might not have developed. The claimant testified that he continued to work for the respondent up until around July 23. The claimant testified that he currently is working for Harry Robinson as a

mechanic. The claimant was asked if he had ever gotten medical treatment for his knee and the respondent responded, "no, I've never got medical treatment for it."

On cross examination, the claimant testified that he would not disagree that, in his deposition, he had indicated that his injury occurred around 2:30 in the afternoon although he was very unsure as to the exact date of the injury. The claimant did agree that he finished working out his shift that day and in fact completed or worked each day to the end of the week. The claimant also agreed that he did not report his injury the day that it happened but had reported to Steve on Thursday that he had gotten hurt. The claimant testified that when he began working for the respondent he was sent papers to be signed which he did but he did not have time to read them thoroughly. The claimant testified that when he did talk to Rick about possibly taking off the following week if his knee did not get better over the weekend, the claimant testified that at that time he did not report to Rick that he had hurt his knee at work. The claimant testified that the reason he stopped working for the respondent at Lifttruck was not because of his knee. The claimant agreed that the MRI which he had done on his right knee was done about a year after his incident and after he had been working for Harry Robinson eight to nine months.

The respondents called Steve Johnson as a witness. Mr. Johnson testified that he was an owner/parts manager for Lifttruck. Mr. Johnson testified that all the employees which are hired for Lifttruck are hired through and work for the respondent. Mr.

Johnson testified that he was familiar with the claimant and that the claimant had worked for Lifttruck through the respondent. This witness testified that the claimant did tell him that his leg was bothering him and he wanted to take off work and get off of his feet. Mr. Johnson testified that the claimant rolled up his pant leg and he had a brace on his leg and showed that his leg was swollen. Mr. Johnson testified that he could not remember if the claimant told him that he had hurt his leg at work but that the claimant later did tell him that he hurt his leg at work. Mr. Johnson testified that the claimant, to his memory, never came and asked for medical assistance for his leg.

On cross examination, Mr. Johnson did agreed that there were a few employees for Lifttruck who were not hired through the respondent. Mr. Johnson also testified that he remembers the claimant talking with him and he told the claimant that he was going home that evening and would discuss the claimant being off. Mr. Johnson testified that the claimant discussed with him on a Thursday his knee problem and the claimant took off that Friday and all the next week. Mr. Johnson testified that he did talk to Rick and explained that the reason the claimant was taking off was because of his leg and that he wanted to get off of his feet.

On redirect examination, Mr. Johnson testified, "at the time that he (the claimant) came to me, I don't recall him telling me that it was a workman's----or, you know, that it happened at the shop. I do not recall that."

On re-cross examination, Mr. Johnson stated that at one point the claimant did say that he bend down and his knee popped. This witness testified that he did not know what the claimant was doing or what he was saying but to the best of him memory it was after he came back to work after the week he had taken off.

The medical records set forth that the claimant was seen at Cooper Clinic on June 28, 2003. The radiology report sets forth that the claimant's right knee has tibial spine spurring with no fractures or other acute bony lesions identified. This report sets forth that this test showed mild posterior patellar spurring. The claimant underwent an MRI of his right knee on July 2, 2003, and this test set forth that the claimant had as mild tricompartmental degenerative change with an associated tear through the posterior aspect of the body of the medial meniscus which does extend to the inferior meniscal surface, also mild sprain of the lateral collateral ligament and a small Baker cyst.

After a review of this entire matter, I find that the claimant has failed to prove by a preponderance of the evidence that whatever event he experienced in June 2002 while working for the respondent did not result in a compensable injury at that time. The claimant has testified to a specific event happening which resulted in immediate pain and a few days later resulting in him taking off work. The medical record of June 28, 2002, is unrevealing as to a sudden onset type injury. The claimant has testified that he has worked eight or more months for another employer doing mechanic work and it is not questioned that the MRI of the claimant's right knee

made in July 2003 does indicate a tear of the claimant's medial meniscus in the right knee. Based on the length of time from this claimant's last date of work with the respondent and his MRI as well as the type work which he had been performing since he last worked for the respondent, it seems unlikely that the claimant's current problems are a result of his activities while working for the respondent in June 2002.

FINDINGS & CONCLUSIONS

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

2. On June 19, 2002, the relationship of employee-employer-carrier existed between the parties.

3. Compensation rate of \$251.00 temporary total disability and \$188.00 permanent partial disability.

4. The claimant has failed to prove by a preponderance of the evidence that he sustained a work related injury while working for the respondent in June 2002. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he sustained a work related injury while working for the respondent in June 2002. Therefore, this claim should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE