

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F107903**

**WILLIAM DICKERSON, EMPLOYEE**

**CLAIMANT**

**CROTHALL SERVICES GROUP, EMPLOYER**

**RESPONDENT**

**INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA, CARRIER**

**RESPONDENT**

**OPINION FILED SEPTEMBER 18, 2003**

A hearing was conducted on August 20, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Little Rock, Pulaski County, Arkansas.

The claimant was represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The hearing was held on August 20, 2003, in Little Rock, Arkansas. It was stipulated as follows:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The temporary total disability rate is \$195.00 and the permanent partial disability rate is \$154.00.
3. The claimant sustained a compensable left lower extremity (left knee) injury on June 10, 2001.

The issues to be litigated at the hearing were as follows:

1. Is claimant entitled to medical benefits and costs associated with his

left knee replacement? (Claimant alleges that the compensable injury of June 10, 2001, aggravated, accelerated or combined with his pre-existing left knee condition to produce the necessity for the surgery.)

2. Is the claimant entitled to temporary total disability from August 1, 2001, to a date to be determined? (Respondent alleges that the healing period ended on August 1, 2001).

3. Is claimant entitled to an attorney's fee?

The claimant, 33 years of age, testified that in 1985 he was involved in a non-work related motor cycle wreck at age 14. He testified about the wreck and the injuries he received:

"A. Yes, my femur was broke and several of my phalanges, which are your toes, were compound fractured, and I had a rope mark on my knee where when it scraped across the ground, it rubbed a hole in the top of my knee, and they had wound up having to do an amputation of my toes, three-quarters of my foot, and from some deal up in there around the tibia and fibula they put a screw in the back side of my knee. I don't exactly know what it was for.

The knee cap itself wasn't broke or any ligaments wasn't damaged, and they had a pin in my femur.

Q. Part of the extent of that surgery, you had the broken femur up above your knee?

A. Uh-huh (affirmative).

Q. They had to surgically break your tibia and your fibula in order to accomplish a leg lengthening, I believe?

A. That's correct.

Q. And it was a pretty extensive process that you had to go through up through 1989, resulting in pretty much the amputation of your foot, correct?

A. That's correct."

(T-9, 10)

The claimant testified that he did not have any knee surgery as a result of that 1985 accident.

In February, 1992, the claimant injured his knee while working at Auto Zone, Inc. As a result of that accident, he had a posterior cruciate ligament replacement. He testified that from October 13, 1992, to June 10, 2001, he did not require any treatment for his knee. He did testify that on one occasion he had to quit one job he had due to his knee hurting, because of the need for lifting heavy objects. Additionally, the claimant testified that he had some jobs from October, 1992 until the compensable June 10, 2001, injury that required him to do extensive bending and lifting. He worked for the Humane Society as a kennel master and animal abuse officer. He was required to be on his feet, bend and stoop on a regular basis. He worked as a pest control employee. He was a termite inspector, a job which required him to crawl and bend under houses to inspect for pest damage. He worked in a liquor store, stocking the cooler and liquor shelves. He worked for Rock Church International as a business maintenance employee. He was required to paint, re-do and buff floors. The claimant then began working for the respondent/employer, a job which required extensive physical labor. His job, basically, was to clean hospital rooms. He performed that job without any trouble for one month before his injury on June 10, 2001. He had to clean many rooms a day. This job required him to make beds, dust, mop, sweep and clean commodes.

The claimant testified that the only real problems he had prior to the 2001 injury were arthritic problems that were aggravated when the weather would change.

The claimant described his June 10, 2001, compensable injury:

“Q. Now Gene, here we are now, June 10<sup>th</sup> of 2001. Tell us what happened on that date.

A. I was coming from the break room in the basement, I was running real late so I was walking pretty fast, and when I came around the corner in the basement, there’s like a decline going down to the elevators. And I still don’t know if it was water or oil or whatever it was, but there was something in the floor, and I slipped and fell right down on my knee.

Q. And you experienced pain?

A. Yes, sir.

Q. Can you be descriptive about what sort of symptoms?

A. At first it was a real sharp stabbing pain and throbbing, so I hopped back to my supervisor’s office, which was around the corner. I was going to put some ice on it and go home, but she told me to go around to the ER.”

(T-15, 16)

The claimant’s knee became swollen, painful and required extensive medical treatment. He had physical therapy and was prescribed medication, neither of which helped the claimant a great deal. He was told he was going to need a total knee replacement.

The claimant had the total knee replacement on November 30, 2001. He underwent therapy, and was prescribed medication. He wanted to get a job, but testified that because of the movements required to perform any jobs he was capable of, he did not believe he could perform the jobs. The claimant did not believe that he could bend or stand, squat with his knees, nor could he run, skip, or jump. (T-23)

The claimant began studying for his Associate in Arts (AA) degree in accounting in March, 2002. In December, 2002, he obtained his AA degree. About that

time the claimant began receiving social security disability. He testified that he would like to get off of social security disability so that he can work. He has applied for some jobs based on his AA degree in accounting.

The claimant complains of current left knee problems. At the hearing, he demonstrated how the left knee was clicking and somewhat off center. According to the claimant, his condition is not “fixable”. He testified that he was told by Dr. Carl Nelson that he would have to “live with it”.

The medical records in this case reflect that the claimant came under the care of Dr. John Vander Schilden, an orthopaedic surgeon and professor of orthopaedic surgery at the University of Arkansas for Medical Sciences at Little Rock, Arkansas. Dr. Vander Schilden took extensive x-rays of claimant’s left knee. He stated that the claimant had “previous end stage degenerative arthritis” and a “strong possibility of patella fracture.” Dr. Vander Schilden’s note of July 17, stated that the claimant’s June 10, 2001, compensable injury caused no “increased morbidity to the knee whatsoever.” According to Dr. Vander Schilden, the claimant reached maximum medical improvement on August 1, 2001.

He referred the claimant to Dr. Carl Nelson, an orthopaedic surgeon and professor at UAMS. On August 20, 2001, Dr. Nelson stated that the claimant suffered from advanced degenerative arthritis of the knee, and would need total knee replacement sometime in the future.

The claimant had a total knee replacement in November, 2001. On December 21, 2001, Dr. Vander Schilden sent a letter to the claimant’s attorney stating:

**“Mr. Dickerson’s injury of 6/10/2001 did aggravate and accelerate the**

**need for the knee replacement surgery.**

I cannot provide him a permanent impairment rating secondary to the injury. His underlying degenerative arthritis was so severe that the fall did not cause any further degeneration that was not already present prior to the injury.”

(Cx-1, p. 19)(Emphasis added.)

Dr. Carl Nelson, who performed claimant’s total knee replacement, sent a letter to the attorney for respondent on August 5, 2003. The letter stated:

“I did not evaluate Mr. Dickerson to determine if his knee injury was associated with his subsequent surgery and I therefore have no opinion or no knowledge that I can impart to you in this area.

...

... I have no idea whether this surgery was necessitated by the advanced degenerative condition of his knee resulting from previous accidental injury.”

(Rx-1, p. 1)

Dr. Vander Schilden gave a deposition in this case on May 19, 2003. He stated that his opinions were within a reasonable degree of medical certainty. He is a professor of orthopaedic surgery at UAMS, and has been there for 18 years. Dr. Vander Schilden testified that when he saw the claimant on June 12, 2001, the claimant had “end stage degenerative arthritis.” He testified what the definition of end stage arthritis was:

“There are three compartments in the knee, the inside of the knee, the outside of the knee, and around the kneecap, and **all three compartment had extremely severe degenerative arthritis.**”

(Rx-3, p. 6)(Emphasis added.)

X-rays taken by Dr. Vander Schilden showed “strong possibility of a patellar fracture.”

“Q. Okay. Okay. Was it obvious the first time you saw him on June 12 that he was heading for a total knee replacement?”

A. Yes.

Q. Okay. And then I - - I think you saw him again on July 17?

A. That's correct.

Q. And at that time you observed that - - I'm reading from your report, his present injury caused no increased morbidity to the knee whatsoever. Is that still your opinion?

A. Yes.

Q. Okay.

A. It did not - - the arthritis was there. You're not going to make the arthritis any worse. **Did it hasten his chances of having a knee replacement? Yes, because it's like throwing gasoline on a smouldering fire."**

(Rx-3, p. 7, 8)(Emphasis added.)

Dr. Vander Schilden stated that as of July 17, the fracture line that he could see in the x-ray in June had disappeared.

Dr. Vander Schilden testified as follows:

"Q. And once a fracture like that heals, does it typically cause residual symptoms?

A. The fracture itself did not. The trauma to the knee, as I mentioned, was like throwing gasoline on a smouldering fire. I mean the arthritis was there, but **the trauma to the knee caused an exacerbation of his symptoms which undoubtedly led to his knee replacement sooner rather than later.**

Q. Did the injury - - whatever injury - - well, let me back up. You understand my client doesn't dispute the fact that he fell and that he hit his knee and that he was having pain.

A. He would have required a knee replacement anyway in the future.

Q. Okay.

A. **The fall made - - required him to have the knee replacement**

**sooner rather than later.** Can I give you an exact time? No.

Q. All right. Well, I was going to ask you that question. Is your opinion that his June - - this accident happened on June 10 - - that his June 10 fall in which he hit his knee accelerated the knee for knee replacement surgery somewhat speculative since obviously we can never know whether or not - - when he would have needed a knee replacement surgery had he not fallen?

A. Exactly.

Q. Okay.

A. But I believe it did hasten the requirement for a knee replacement because of the intractable pain that he was having.

Q. That was my next question. Why did he - - why do you believe he had the knee placement when he did?

A. Because of pain.

Q. Because of pain?

A. I mean you don't replace a knee, no matter how bad the x-rays look, unless the patient is extremely symptomatic.

Q. What caused the pain?

A. The trauma to the knee. So it's not the small fracture that he had on his patella. It's the trauma that induced the fracture that caused his underlying degenerative arthritis to flare up."  
(Rx-3, P. 10, 11, 12)

.....

Q. Doctor, the term accelerate is appropriate as a description of how this trauma played into the necessity of ultimately having to have this knee replacement surgery which was done on November the 30<sup>th</sup> of 2001, true?

A. That's true.

Q. And you of course mentioned the term throwing gasoline on a smouldering fire. Another term that might be appropriate, the straw that broke the camel's back?

A. That is correct."

(Rx-3, p. 16)(Emphasis added.)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee-employer-carrier relationship existed at all relevant times.
2. The temporary total disability rate is \$195.00 and the permanent partial disability rate is \$154.00.
3. The claimant sustained a compensable left lower extremity (left knee) injury on June 10, 2001.
4. The preponderance of the evidence reflects that the claimant is entitled to medical treatment and costs associated with his total knee replacement. The compensable injury of June 20, 2001 accelerated and combined with claimant's pre-existing condition to produce the need for medical treatment. The treatment was reasonably necessary and related to the compensable injury.
5. The preponderance of the evidence reflects that the claimant is entitled to temporary total disability from August 1, 2001 to January 21, 2002.
6. The preponderance of the evidence reflects that the claimant is entitled to an attorney's fee for his attorney Mr. Gary Davis for controversion.

---

**DISCUSSION**

**1. MEDICAL TREATMENT**

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated or combined with the disease or infirmity to produce the disability for which compensation is sought. See: Nashville Livestock

Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). As is commonly stated, the employer takes the employee as he finds him. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury, unless the injury contributes to the condition by accelerating or combining with the pre-existing condition.

The present case turns on an issue of medical causation, and Dr. Vander Schilden is the only physician to have rendered an expert medical opinion in this case. As I interpret Dr. Vander Schilden's deposition testimony and reports, Dr. Vander Schilden has concluded that the claimant's work related injury accelerated his left knee condition at issue in this case, causing a need for knee replacement surgery to the left knee.

The record is clear that Dr. Vander Schilden's medical opinion regarding causation are based primarily on his examinations and x-rays, objective diagnostic testing and his own years of experience as a knee surgeon and professor of orthopaedic surgery. Dr. Vander Schilden's medical opinion appears to be based largely on facts not only related to him by the claimant, but due to independent knowledge upon which Dr. Vander Schilden has based his medical opinions on causation. Dr. Vander Schilden is the only expert medical witness to testify in this case, and Dr. Vander Schilden opined that the claimant's work related left knee injury accelerated his left knee condition

causing the need for replacement surgery.

I cannot find any medical records introduced into evidence regarding the claimant's knee problems from October, 1992 until the date of his compensable injury, June 10, 2001. The claimant apparently had numerous physically stressful jobs from October, 1992 through June 10, 2001. The claimant testified that he did not have the need to go to the doctor for his knee during that period of time, but did certainly have knee pain. However, after his admittedly compensable injury on June 10, 2001, the claimant has demonstrably objective medical findings of an injury which resulted in a recommendation from the chairman of hip and knee reconstruction at the Department of Orthopaedic Surgery at UAMS in Little Rock, Arkansas that he have a total knee replacement. No one recommended knee replacement for the claimant BEFORE the compensable injury. And, if he needed knee replacement, the preponderance of the evidence certainly reflects that the compensable injury ACCELERATED the need. As Dr. Vander Schilden stated, the claimant's injury was "like throwing gasoline on a smouldering fire." The preponderance of the evidence then reflects that the claimant's work related left knee injury aggravated and accelerated claimant's left knee condition to such extent as to require a left knee replacement. The claimant's medical treatment and costs associated with his left knee replacement is reasonably necessary medical treatment and related to his June 10, 2001, compensable injury. See: Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001) (affirming Full Commission Opinion, Jones v. Wackenhut Corp., E901848, May 15, 2000).

**2. IS CLAIMANT ENTITLED TO TEMPORARY TOTAL DISABILITY BENEFITS FROM AUGUST 1, 2001, TO A DATE TO BE DETERMINED?**

The claimant sustained a scheduled injury to his left lower extremity. An injured employee is entitled to temporary total disability compensation for a scheduled injury during the period of time that he is within his healing period and has not returned to work. The respondent alleges that claimant's healing period ended on August 1, 2001. (Rx-2, p. 28) Dr. Vander Schilden, in his report of July 17, 2001, indicated that the claimant's fracture had healed, according to x-rays. Dr. Vander Schilden stated that the present injury caused no increased "morbidity" to the knee whatsoever. He opined that the claimant was going to need a total knee replacement "in the very near future," (and "the future" was made more immediate because of the compensable injury.) He referred the claimant to Dr. Carl Nelson since Dr. Nelson performs total knee replacements and Dr. Vander Schilden does not. According to Dr. Nelson's report of August 20, 2001, the claimant was complaining of left knee pain when he saw him. Dr. Nelson's x-rays on August 20, 2001, showed "marked joint narrowing, osteophyte formation in the lateral compartment, a cyst and joint narrowing." (Rx-2, p. 30) Dr. Nelson scheduled the claimant for a total knee replacement in November, 2001. The healing period is defined as the period necessary for the healing of an injury resulting from an accident. A.C.A. § 11-9-102(12) (Repl. 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).

Subsequent to the total knee replacement in November, 2001, the claimant told his treating medical personnel that Dr. Nelson had "dismissed him." (Rx-1, p. 76)

Additionally, it appears that the claimant re-injured his left knee on January 21, 2002.

The note at Respondent's Exhibit 1, Page 71 states that the claimant "fell today"

(January 21, 2002) onto his left knee. His left knee was "warm, painful."

"Popping/cracking" were noted.

According to the medical records, Dr. Nelson had dismissed the claimant and told him that he would have to live with some swelling and pain. Additionally, it would take speculation and conjecture to state that the claimant's healing period lasted past January 21, 2002. This new injury required the claimant to "heal." The new non-work related fall occurred shortly after the claimant's surgery. Therefore, the claimant is entitled to temporary total disability from August 1, 2001, until January 21, 2002.

The claimant has shown by a preponderance of the evidence that he is entitled to an attorney's fee for controversion of the above-described and discussed benefits.

#### **AWARD**

The claimant is awarded the benefits specifically described herein, along with the attorney's fee for claimant's attorney, Gary Davis, pursuant to the Arkansas Workers' Compensation law. This Award shall bear interest at the legal rate until paid.

**IT IS SO ORDERED.**

---

**DON N. CURDIE,**  
**Administrative Law Judge**

DC