

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209588

JOHN HARLESS	CLAIMANT
PETERSON FARMS, INC.	RESPONDENT
COMPCARE ADMINISTRATORS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED OCTOBER 30, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

There was a full hearing scheduled for October 14, 2003. All parties being present, it was agreed that this matter should be submitted to the Commission for decision based on a stipulated record and agreed upon documentary evidence.

A pre-hearing order was entered in the claim on September 3, 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 July 11, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his left knee on July 11, 2002.

4. The claimant is entitled to a weekly compensation rate of \$345.00 for permanent partial disability and \$259.00 for temporary total disability.

5. Temporary total disability has been paid from August 20, 2002, through September 18, 2002.

6. Medical expenses have been paid.

7. The claimant reached the end of his healing period on March 12, 2003.

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

1. The claimant's right to have an FCE.
2. Attorney's fees.

The claimant withdrew his request for temporary total disability at the time of the scheduled hearing.

In regard to the foregoing issues the claimant contends that he was treated by Dr. Allard, who indicated that he could return to work but would not give any permanent restrictions, not even indicate that an FCE was in order so he could determine, as Dr. Arnold has, in his July 22 report, "if he's able to return to his prior work position." There are several things that elementary and fundamental in Workers' Compensation. After someone has an injury, and after they receive treatment, whether it is extensive or not, there needs to be a medical determination as to whether someone can return to their former job. If you have a stroke and half of your brain is gone, it would be axiomatic that you might want to decide what the job functions are before you send someone back into the work environment without any reservations whatsoever. Doctors are

hurrying people through the system and once they get paid they don't give a damn and that's not what we want for John Harless. This man needs an FCE whether Dr. Allard gives it, or whether Dr. Arnold is recognized as the treating physician.

The respondents amended their contentions from that as set forth in the pre-hearing order as follows: The respondents have not denied any medical treatment by the authorized treating physician. The claimant saw Dr. Chris Arnold on his own. In his report of July 22, 2003, Dr. Arnold stated that "...ultimately it may come to the point that he may require a functional capacity evaluation to determine if he is able to return to his prior work position." The respondents contend that this issue has been adequately addressed by the authorized treating physician, Dr. Mark Allard. Dr. Allard first saw the claimant on August 8, 2002, had the claimant undergo an MRI and ultimately performed surgery on August 20, 2002. Dr. Allard last saw the claimant on March 12, 2003, and at that time stated, "based on his full range of motion, lack of effusion, lack of ligamentous instability, and lack of any objective findings at the time of arthroscopy, I would say that he has reached maximum medical improvement at this point and has no evidence of permanent partial impairment. Based on these findings, it is my recommendation that he look for work and has no official restrictions at this point." Clearly the doctor who has treated the claimant who has followed him for approximately seven (7) months and is most familiar with his treatment has stated that he has essentially made a complete recovery. I would also point out on behalf of my client that Dr. Arnold does not recommend a functional

capacity evaluation but merely states that it may come to a point in time that he may require one. The respondents contend an FCE is totally unnecessary based on the findings of the authorized treating physician. For that reason, the respondents contend that the Commission should respectfully deny the claimant's request for an FCE.

The documentary evidence agreed to be submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted a packet of documentary evidence marked Claimant's Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The parties have agreed that the only issue to be decided is that of the claimant's entitlement to a functional capacity evaluation.

The medical records set forth that the claimant was seen by Dr. Mark Allard on August 8, 2002, for his left knee injury. After a physical examination, Dr. Allard assessed the claimant with having a suspected chronic ACL tear and acute medial meniscus tear. Dr. Allard recommended an MRI and medications were prescribed. The claimant underwent a left knee MRI on August 12, 2002, and the findings set forth that the claimant had a partial tear of the left posterior cruciate ligament, meniscal degeneration of the posterior horn of medial meniscus but there is no evidence of a medial meniscus tear. This test also showed moderate chondromalacia patella primarily involving the lateral facet, a fluid filled cyst and moderate left knee effusion. Dr. Allard writes on August 14, 2002,

that after reviewing the claimant's MRI which shows an old partial PCL tear and the left knee with subacute medial meniscus tear. Dr. Allard recommended arthroscopic surgery. The claimant underwent arthroscopic knee surgery on his left knee on August 20, 2002. Dr. Allard writes that arthroscopic examination of the claimant's left knee revealed quite a bit of synovitis within the intercondylar notch but the anterior cruciate ligament was noted to be intact, the posterior cruciate ligament was not definitely seen and was not explored, the posterior horn of the medial meniscus was absolutely intact and there was no evidence of any extension of tear into the articular surface. Dr. Allard continues to write that the lateral meniscus had some fraying and degenerative changes in the central rim but nothing that required meniscectomy and no peripheral pathology. Dr. Allard writes on August 28, 2002, that he did not see any injury to the claimant's ACL and did not see any complete injury extending to the articular surface of the medial meniscus. Dr. Allard writes that the claimant did have some fibulation changes from the lateral meniscus that were probably not significant and he did have quite a bit of chondromalacia in the articular surface of the patella and quite a bit of synovitis in his knee. Dr. Allard prescribed medications as well as physical therapy. On September 18, 2002, the claimant was seen by Dr. Allard who notes that the claimant has been going to therapy and his knee is getting a little better. Dr. Allard writes that he is not going to prescribe any more medications and they are going to try and get him off his narcotic pain pills but he should continue his physical therapy. On March 12, 2003, the claimant was seen by Dr. Allard who writes that

upon examination the claimant had no effusion, he had full range of motion, Lachman testing is negative, no collateral ligament instability, no lateral joint line tenderness, and no tenderness around his patella. The doctor notes that the claimant does still have a moderate amount of tenderness over the medial joint line and mild to moderate pain with meniscal compression. No recommendations were made by Dr. Allard at this time and it is noted that the cane which the claimant is using should be used on a per needed basis. Dr. Allard writes that based on his full range of motion, lack of effusion, lack of ligamentous instability, and lack of any objective findings at the time of arthroscopy, the doctor notes that the claimant has reached maximum medical improvement and has no evidence of permanent partial impairment. Dr. Allard concludes that based on these findings, the claimant should look for work and he has no official restrictions at this point.

Dr. Christopher Arnold writes on July 22, 2003, that he has seen the claimant for an evaluation of his left knee. After examination and review of the claimant's operative report, Dr. Arnold writes that there was a question about a PCL tear. Dr. Arnold writes that clinically today the claimant's knee appears to be stable and that he discussed with the claimant the cause of his pain, opining that the claimant's discomfort is most likely coming from a patellofemoral disorder. Dr. Arnold also notes that some of the discomfort may be coming from residual quad weakness. The doctor writes that the claimant has received excellent care from his orthopedic surgeon and he does not think that the claimant needs any further surgical treatment but he should work to regain his quad

strength. Dr. Arnold concludes that ultimately it may come to the point that the claimant may require a functional capacity evaluation to determine if he is able to return to his prior work position and recommended that the claimant follow up with Dr. Allard.

After a review of the stipulations, contentions and documentary evidence submitted in this matter, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to a functional capacity evaluation. Dr. Arnold has suggested that perhaps or ultimately an FCE may be required to determine if he is able to return to his prior work position. Dr. Arnold did recommend that the claimant follow up with Dr. Allard who he notes has given him good care in the past. Dr. Arnold has not recommended an FCE, only has suggested its possibility after reviewing Dr. Allard's operative report as well as examining the claimant. Dr. Allard determined after physical examination, surgical intervention and follow up for the claimant's left knee treatment that he has no permanent partial impairment and has not set forth any restrictions which should inhibit this claimant's work possibilities as to his left knee. I do not find that the claimant has shown by a preponderance of the evidence that he is entitled to a functional capacity evaluation to determine if in fact he has any physical restrictions resulting from his left knee injury. Since Dr. Allard has already addressed that issue.

#### FINDINGS & CONCLUSIONS

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

2. On July 11, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his left knee on July 11, 2002.

4. The claimant is entitled to a weekly compensation rate of \$345.00 for permanent partial disability and \$259.00 for temporary total disability.

5. Temporary total disability has been paid from August 20, 2002, through September 18, 2002.

6. Medical expenses have been paid.

7. The claimant reached the end of his healing period on March 12, 2003.

8. The claimant has failed to prove by a preponderance of the evidence that he is entitled to a functional capacity evaluation. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to a functional capacity evaluation.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE