

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F206101

PHILLIP W. MEURER, EMPLOYEE

CLAIMANT

QUEBECOR, EMPLOYER

RESPONDENT

**TRAVELERS PROPERTY CASUALTY INSURANCE
COMPANY, INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED DECEMBER 18, 2003

Hearing before Chief Administrative Law Judge David Greenbaum on November 21, 2003, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Ralph Theodor Stricker, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. Mark Mayfield, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted November 21, 2003, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws.

A prehearing conference was conducted in this case on October 1, 2003, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was marked "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant

times through July 17, 2000; that claimant's wages were sufficient to entitle him to the maximum compensation rates of \$394.00 per week for temporary total disability and \$296.00 per week for permanent partial disability in the event the claim was found compensable; and that the claim had been controverted in its entirety. In addition, the parties agreed that the claimant filed a claim for benefits on June 3, 2002.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be determined. The issue of whether the claim was barred by Statute of Limitations was raised as an affirmative defense by respondents.

Claimant contended, in summary, that he sustained a gradual onset injury to both knees, as well as a gradual onset back injury which arose out of and during the course of his employment with Quebecor Jonesboro, Inc., formerly Colorworld; that respondents should be held responsible for all outstanding medical and related treatment, together with continued, reasonably necessary medical treatment; that he was entitled to temporary total disability from his last day of work and continuing through October 15, 2001; and that a controverted attorney's fee should attach to any benefits awarded. The claimant reserved the issue of permanent disability, if applicable.

The respondents contended that its first notice of any alleged back injury

was the date of the prehearing conference, and raised lack of notice as an affirmative defense. Respondents further contended that the claim(s) were not compensable because the claimant could not satisfy the requirements of A.C.A. §11-9-102(4)(A)(ii); and A.C.A. §11-9-102(4)(E)(ii), specifically, rapid repetitive motion and major cause, for his knee injuries, as well as major cause for the alleged back injury. As further affirmative defenses, respondents maintained that the claim was barred by the Statute of Limitations or, alternatively, any claim for benefits dating back more than two (2) years from the filing of the claim on June 3, 2002, was barred by limitations. Respondents contended that there was no causal relationship between the claimant's alleged work injuries and the medical and disability benefits sought. In the event compensability was overcome, respondents alternatively maintained it was entitled to a credit for any unemployment compensation the claimant received following his termination, as well as a credit for three (3) months' severance pay received. Finally, respondents requested a credit against any medical expenses owed for medical bills paid in claimant's behalf by group health insurance providers.

In addition to the claimant, Paul Lambert was called as a corroborating witness in his behalf. James Jackson, Charles Kratts, and Robert Gray were called as witnesses for the respondents. The record is composed solely of the transcript of the November 21, 2003, hearing containing numerous exhibits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The within claim is barred by the Statute of Limitations as provided by Ark. Code Ann. §11-9-702.
4. Alternatively, in the event this claim is not barred by the Statute of Limitations, which is inconsistent with the findings herein, the claimant has failed to prove, by a preponderance of the credible evidence, that his knee injuries, as well as his alleged back injury, arose out of and during the course of his employment with the respondent employer.
5. The claimant has failed to prove, by a preponderance of the credible evidence, that his need for medical treatment and disability were causally related to his employment with the respondents.
6. Respondents have controverted this claim(s) in its entirety.

DISCUSSION

In hindsight, this claim could have been resolved on a stipulated record

had all the material facts been disclosed during the prehearing process. As reflected by the Prehearing Order, the parties agreed that the employment relationship existed at all relevant times through July 17, 2000. The undisputed facts revealed that the last day that the claimant actually worked for the respondent was April 17, 2000, at which time he resigned from his management position with the employer. Despite the fact that the claimant did not perform any employment services after April 17, 2000, he was considered an employee and paid three (3) months' severance salary through July 17, 2000. It was stipulated that the claimant did not file a claim for workers' compensation benefits until June 3, 2002, which, by definition of the date of injury, would be more than two (2) years after the claimant knew, or should have known, about any alleged injury and is, therefore, barred as a matter of law because the claim was not timely filed.

STATUTE OF LIMITATIONS

The time for filing of claims under the Workers' Compensation Act as amended is set out in Ark. Code Ann. §11-9-702 (Repl. 2002) which is set out, in part, below:

(a) Time for Filing.

(1) A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If, during the two-year period following the

filing of the claim, the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter.

(B) For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in §11-9-102(4). (Emphasis supplied)

The relevant facts in this case are undisputed. The claimant, Phillip W. Meurer, started working for the respondent on October 3, 1973. The last day the claimant worked was April 17, 2000, at which time he voluntarily terminated his employment. The claimant was paid full wages as part of a severance package for ninety (90) days following his resignation and was, therefore, considered an employee through July 17, 2000. During the last sixteen (16) years of claimant's employment, he worked as a supervisor, his duties requiring a lot of standing, walking, climbing and squatting. It is undisputed that the claimant was required to be on his feet the greater part of a work-day. His sitting and desk duties were limited. It is further undisputed that the claimant filed a claim for gradual onset knee injuries on June 3, 2002. The record reflects, and the claimant testified, that he first began experiencing problems with both knees during the 1980s. He stated that he experienced periodic swelling of his knees over the years and occasionally required injections of cortisone for treatment. In fact, the medical evidence confirms that the claimant experienced significant problems with both knees over the years; had in fact undergone arthroscopic surgery on the right knee on December 3, 1998,

and had been diagnosed with degenerative joint disease at least as early as December 3, 1998. In addition, the claimant received prior treatment for low back strain of unknown etiology. I feel compelled to further point out that the claimant testified that on an unspecified date between the prehearing conference on October 1, 2003, and the date of the within hearing, he fell and broke his kneecap. In addition, the record reflects that while the claimant filed his claim for gradual onset injuries to both knees on June 3, 2002, he did not amend his claim to include an alleged gradual onset back injury prior to the October 1, 2003, prehearing conference. (Tr.23-26)(Comm. Ex. 1)

In view of the undisputed facts, aforementioned, I find that as a matter of law, the within claim is barred by the two (2) year statute of limitations provided in A.C.A. §11-9-702(a). Accordingly, any additional issues would be rendered moot. However, assuming arguendo that the claim is not barred by time, which is contrary to the conclusions reached herein, I further find that the claimant could not prevail because he has failed to prove, by a preponderance of the evidence, that he sustained an injury within the meaning of the Arkansas Workers' Compensation Laws.

COMPENSABILITY

In the present claim, the claimant does not contend that his injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, he contends that he sustained gradual onset injuries to both knees as

the result of his varied work activities. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (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 cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, he fails to establish compensability of the claim, and compensation must be denied. *Lay vs. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

As previously pointed out, the claimant belatedly amended his claim to include a gradual onset back injury. Rapid repetitive motion is not required for gradual onset back injury pursuant to A.C.A. §11-9-102(4)(A)(ii)(b) which is required for other gradual onset injuries under A.C.A. §11-9-102(4)(A)(ii)(a). However, the claimant still must prove, by a preponderance of the evidence, that the injury was the major cause of disability or need for treatment. Further, a claimant must prove that a causal connection exists between the injury and

the employment. *Gerber Products vs. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985).

As previously pointed out, the claimant acknowledged that the injuries to his knees, as well as his back, manifested themselves several years prior to the filing of this claim. Rather than conduct an exhaustive analysis of the medical evidence, suffice it to say that the medical evidence reflects that the claimant received significant medical treatment for both knees, including arthroscopic surgery on the right knee, and had been diagnosed as having degenerative joint disease. A preponderance of the evidence reflects that the claimant's physical problems were all related to known pre-existing conditions rather than any work-related injury.

It would require sheer speculation and conjecture to attribute the claimant's physical problems, need for treatment and disability to a work-related injury. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company vs. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital vs. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Further, although I find that the claimant has failed to prove a causal connection between the alleged injuries and his employment, clearly the claimant has not shown that his job duties involved rapid repetitive motion necessary to establish gradual onset knee injuries and/or that any alleged work

injuries were the major cause of his disability and need for treatment.

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in his favor. *Pearson vs. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer vs. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss vs. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met his burden of proof be weighed impartially, without giving the benefit of the doubt to either party. *Arkansas Code Annotated §11-9-704(c)(4)*; *Wade vs. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler vs. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that he sustained a compensable injury within the meaning of the Arkansas Workers' Compensation Laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge