

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F213351

MARY RUNYON, EMPLOYEE

CLAIMANT

**DOLLAR GENERAL STORE,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED AUGUST 1, 2003

The hearing was held on June 24, 2003, before ADMINISTRATIVE LAW JUDGE DON N. CURDIE, at Little Rock, Pulaski County, Arkansas.

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

The respondent was represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on June 4, 2003, in Little Rock, Arkansas. It was stipulated as follows:

1. The employee/self-insured employer relationship existed at all relevant times.

The issues to be litigated at the hearing were limited to the following:

1. Did claimant sustain a compensable left knee injury on or about April 10, 2002?

2. Is claimant entitled to temporary total disability from the date of the injury to a date to be determined?

3. Is claimant entitled to medical benefits?

4. What is claimant's average weekly wage?
5. Is claimant entitled to an attorney's fee?

The claimant testified at the hearing that she is 52 years old. The claimant has worked as a retail worker at Family Dollar Store and the Dollar General Store. The claimant began working for the Dollar General Store in July, 2001. She received a "New Hire Packet," which contained information given to all new employees concerning employer policies, including requirements of reporting workers' compensation-related injuries. The claimant's job required that she stand on her feet while unloading trucks. She was often required to bend and lift. Claimant would carry or roll items from the truck to the sales floor to stock items for sale.

The claimant testified that she experienced bilateral knee problems prior to April, 2002. She testified that she would experience swelling in both knees quite often (T-38). Claimant had a right knee replacement twenty years ago. The claimant apparently saw a neurologist on April 5, 2002, (about one week before the alleged compensable injury) who stated that the claimant had knee instability. The claimant specifically stated that she had experienced prior trouble in her left knee (more specifically in back of the left knee), but she was able to perform her regular job. She stated that her prior problems did not involve swelling and "catching" of the knee. Claimant stated that she has experienced bilateral knee problems all of her life, and that they were often "weak" (T-39.) She testified regarding the alleged work related injury:

"A. On April 10th, at work, I was putting up stock and I stepped down off the ladder to go to the register to cash somebody - - you know, check somebody out. And when I stepped down, something happened to my

knee.

Q. Okay. Well, did you - - what did you do to that knee?

A. I'm not sure. It - - if I twisted it or what, but I could not - - my knee would not work like it was supposed to.

Q. And you were up on a ladder at the time?

A. Yes, I was.

Q. You were descending?

A. I was descending down to go to the register.

Q. Okay. And what problems did you feel at that time?

A. Pain. A lot of pain."
(T-13, 14)

The claimant testified that the ladder was approximately two feet tall.

Claimant stated that she was unable to work, and she immediately went home to put on her knee braces, which she had obtained approximately one month prior to the date of her alleged injury (T-31.) She testified that she used those braces in the past when her knees became weak (T-32.)

The claimant testified that she went to her family doctor, Dr. Elizabeth Armstrong, who referred the claimant to Dr. Kyle Blickenstaff, an orthopaedic surgeon. The report of Dr. Blickenstaff dated April 26, 2002, indicated that claimant told him that she had fallen approximately three months prior to April 26, 2002. (T-48)(Emphasis added.)

Dr. Blickenstaff operated on claimant's left knee on April 26, 2002. The claimant did not have a good result from that arthroscopic surgery. She had pain and swelling in the left knee. An additional arthroscopic surgery was performed on

claimant's left knee on July, 2002.

The claimant testified that from the date of the injury until the date of her first surgery on April 26, 2002, she experienced more pain than she did before her alleged work related injury. According to the records, the claimant did not mention that she had injured herself at work when she went to see Dr. Armstrong (Emphasis added.)

In August, 2002, the claimant went to see Dr. James Mulholland, a knee specialist. She testified that she sees Dr. Mulholland intermittently, approximately every two months, when she needs to have her left knee drained of fluid. Dr. Mulholland told her that she should have her left knee replaced.

The claimant testified that she wants to return to work after her left knee is replaced. She has not worked since the date of her alleged work related injury. She is still being treated by Dr. Mulholland, and she testified that he has advised her not to return to work. She apparently filed her workers' compensation claim in December 2002. She said that when she saw Dr. Blickenstaff and Dr. Armstrong, she used her personal health insurance to pay for the treatment. She also used that insurance to pay for the surgeries. She is able to drive, cook, read, sweep and mop floors (T-40.)

Donald Miller testified at the hearing. He works as a store clerk at Dollar General Store, and has worked there for one and one-half years. The claimant was his manager before the alleged work related injury. He testified that he saw the claimant wearing knee braces quite often prior to the injury. He stated that on the day the claimant allegedly sustained a work related injury, he began working at 3:30 in the afternoon. He testified that the claimant never complained of being hurt at work. She was always complaining of knee problems, but she did not say what the cause of her

problems were or whether the problems were work related. He testified that there was nothing unusual about her complaints of knee pain on the day she was injured.

According to him, her knee problems were the same the day before the injury as the day of the injury. The claimant did tell him that she was going to see the doctor for her knee, but did not say why.

Margo Liggins testified that she was the assistant manager of the Dollar General Store on the date of claimant's alleged work related injury. She testified as follows:

“Q. Did she ever make any complaints to you about having any left knee problems?

A. While we worked, Mary had problems with her knees.

Q. And how often - -

A. And she wore a brace.”
(T-71)

According to Ms. Liggins, the claimant wore knee braces several times while they both were working. She worked the day shift on April 10, 2002, from 8:00 a.m. to 3:30 p.m.. The claimant came in to work at approximately 1:00 p.m. on that date, but did not report any injury. Liggins testified as follows:

“Q. Was there ever any period of time while you were there that Ms. Runyon stated to you that she injured her knee at work?

A. No, ma'am.

Q. Did she ever state to you that she twisted or turned or her knee popped while she was coming down a ladder or stepping off a ladder or stool?

A. No.

Q. Did she borrow your car that day to go home and get her knee braces?

A. No.

Q. Did she indicate to you that she wanted to file a claim for workers' compensation benefits for any kind of knee problems or complaints?

A. No.

Q. Are you familiar with the procedure of what you're supposed to do if someone does have a claim for workers' compensation benefits or any injury at work?

A. Yes.

Q. And what is that?

A. You have to do an incident report.

Q. Are the workers' compensation procedures communicated to employees at Dollar General?

A. Yes. We get - - when we're hired, we get a packet, an envelope. And it has your insurance and your Dollar General procedures. You have to read and sign and workman's comp and employees disgruntled and problems - - you know, disgruntled. And when you get hired, you get a packet.

Q. Back on April 28, 2001, when you were hired, did you get one of those kind of packets?

A. Yes, ma'am.

Q. Were you still giving them out in June and July of 2001 when new employees were hired?

A. Yes.

Q. Did Ms. Runyon at any time ever state to you that she felt like she had twisted or any way injured her knee while at work at Dollar General?

A. No.
(T-73, 34)

The claimant did not work after April 10, 2002.

Catherine Dunham testified that she was the manager of the Dollar General Store in Augusta, Arkansas in 2002. She remembers the claimant having problems with her knees prior to April 10, 2002. She testified that when the claimant was hired, she went over workers' compensation requirements with the claimant concerning what to do if she sustained an injury, such as reporting it to management personnel. She testified as follows:

"Q. Did Ms. Runyon ever contact you about any kind of complaints or problems with her knee - - her left knee?

A. She brought me a note saying that she was having surgery - - she didn't bring it in. Her daughter did. When she picked up her last paycheck, she brought me a note saying that she was having surgery. I didn't know what it was for up until a few months ago when this all came about.

Q. So at that point she had never contacted you about feeling like she - -

A. After the - -

Q. - - hurt herself?

A. - - 10th, we never heard from her anymore. She didn't - - we tried to contact her to find out if she was coming back to work and why she didn't call in that Thursday and Friday. And Ms. Liggins even went to her house to check on her. She didn't come to the door. We had no idea what happened to her after that point.

Q. Were you having to modify any of her duties before April 10th, 2002?

A. She - - yeah. I have that in that note over there. I think it was in January she was having high blood pressure problems and she wanted to go on light duty. And Dollar General's policy is, you know, they don't - - they either want you to take a FMLA or just take off of work. And she said that she couldn't take off. And there was another encounter that she had with my boss because we weren't allowed to put people on light duty at that time.

Q. Okay. Did she take some time off from work at that point?

A. She took some time off from work at several points. When she was first hired in, she took some time off due to medical problems she had.”
(T-82 83)

The medical records in this case reflect that the claimant, on April 7, 1990, complained of pain in the back of her left knee. The record reflects that she had tenderness in the posterior part of her knee after flexion “while working.” X-rays of the left knee reflected a “chronic” problem. (Rx-1, p. 5)

In April, 2000, the claimant injured her wrist at work and did not hesitate to report that injury as a work related injury while working at Dollar General Store in Augusta, AR. (Rx-1, p. 14) The report of April 28, 2000, stated that the claimant had a genetic propensity to develop osteoarthritis.

The medical records reflect that on September 6, 2001, (Rx-1, p.22), the claimant complained of left knee pain and swelling. According to the claimant, there was no cause for the injury, although the claimant admitted that she had to often bend and lift at work.

Respondent’s Exhibit 1, page 23, is a record reflecting that on September 12, 2001, the claimant fell, hurting her left knee. Respondent’s Exhibit 1, page 25, indicated that on November 13, 2001, the claimant complained of pain in her left knee. She apparently injured herself “on the knees Saturday at work.”

Respondent’s Exhibit 1, page 40, reflects that the claimant complained that her “left knee cap popped out of place.” Nothing was said about the injury being work related, according to that medical record. On April 15, 2002, the claimant went to the hospital emergency room, stating that she had twisted her left knee. She was

complaining of the knee “locking” and “popping.” X-rays reflected degenerative changes, and she was referred to Dr. Blickenstaff. The x-rays showed no joint effusion and no dislocation.

On April 18, the claimant again saw Dr. Blickenstaff. She told him that since April 10, her left knee had been popping in and out, and had been “locking.” X-rays of the left knee showed degenerative changes. The doctor wanted to rule out a meniscus tear versus a loose body or lesion in the left knee. On April 26, 2002, Dr. Blickenstaff performed arthroscopic surgery of the claimant’s left knee. Respondent’s Exhibit 1, page 55, indicated that claimant told Dr. Blickenstaff that she fell three months ago. Subsequent to the surgery, the claimant still complained of swelling. The claimant’s condition did not improve, so Dr. Blickenstaff performed another arthroscopy to her left knee. Respondent’s Exhibit 1, page 78 reflects that on July 18, 2002, the claimant told the doctor that she had a “locking episode to her left knee” approximately four months ago. On August 1, 2002, the claimant went to the emergency room because she felt something pop, and she experienced pain in her left knee when she was recently getting out of a car.

In August, 2002, the claimant had an MRI on her left knee. There were no tears in the meniscus. Claimant’s Exhibit 1, page 26 reflects that there was a chronic lesion located, but no fragments.

The claimant went to see Dr. James Mulholland at the Arkansas Knee Clinic in Little Rock, Arkansas. She told Dr. Mulholland that her injury was work related. Respondent’s Exhibit 1, page 96 reflects that on September 2, 2002, the claimant went to the emergency room and stated that she fell on her left knee “two days ago.” An x-

ray of September 2, 2002, showed a mild degenerative change, but no acute trauma.

Respondent's Exhibit 1, page 113 reflects that on September 29, 2002, the claimant was in an automobile accident and re-injured her left knee. There was increased swelling and pain. A report dated October 15, 2002, stated that the claimant suffered from "extreme mal-alignment" of her left knee. It was Dr. Mulholland's opinion that the claimant would not improve (Rx-1, p. 120.) On November 26, 2002, (Rx-1, p. 148), the claimant stated that she fell and hurt her left leg and knee on November 25, 2002. On November 26, Dr. Mulholland gave an opinion that all of the claimant's trouble was related to the April 15, 2002 work related injury. In December, 2002, the claimant filed a workers' compensation claim form for the first time. It is Dr. Mulholland's opinion that the claimant's injury is work related and that she has not ended her healing period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer relationship existed at all relevant times.
2. The preponderance of the evidence reflects that the claimant did not sustain a compensable, specific time and place of occurrence compensable injury in April, 2002. A.C.A. 11-9-102 (Repl. 2000.)

DISCUSSION

The claimant alleges that she sustained a compensable left knee injury on or about April 11, 2002. Since the claimant contends that she sustained an injury after July 1, 1993, this claim is controlled by the Arkansas Workers' Compensation law as amended by Act 796, 1993. Since the claimant, in the present case, alleges that she

sustained an injury as a result of a specific incident, which is identifiable by time and place of occurrence, the requirements of A.C.A. § 11-9-102 (Repl. 2002) are controlling, and the following requirements must be satisfied:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of her 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) proof by a preponderance of the evidence that the existence of the injury is supported by medical evidence supported by objective findings;
- (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.

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the injury alleged, she fails to establish the compensability of the claim and compensation must be denied. The claimant alleges that she sustained a specific time and place of occurrence on or about April 11, 2002. The preponderance of the evidence in this case reflects that the claimant was aware that rules of employment required her to report a workers' compensation injury as soon as the injury occurred. Her supervisor had given her a "New Hire Packet" when she began working with the respondent/employer. In April, 2000, the claimant injured her wrist at work and reported it as a work related injury. The preponderance of the evidence in this case reflects that the claimant was aware of the reporting requirement. The medical records in this case reflect that the claimant had chronic knee pain as early as 1990. The claimant was forthcoming when she testified that she had knee problems, including swelling of her knees, during her entire life.

Twenty years ago she had surgery on her right knee in the form of total knee replacement. On September 6, 2001, the claimant complained of pain and swelling in her left knee and there was no specific injury mentioned. The claimant apparently fell on her left knee on September 12, 2001; and on November 13, 2001, the claimant complained of pain and swelling in both knees because of strenuous work.

Less than a week before the alleged compensable injury, the claimant saw a neurologist and complained of "pain in knees." When the claimant went to see a doctor at McCrory Health Center, McCrory, AR, she stated that her left knee cap had popped out of place. She did not, according to the record, mention that the injury was work related. When she saw Dr. Blinkenstaff, she did not mention, according to the record, that any pain she was suffering was work related. It is noted that the claimant did not file a workers' compensation claim until December, 2002, (nine months after the injury.) Further MRI's and x-rays did not reflect any internal tears in the knees. The treating physicians stated claimant suffered from "degenerative changes and severe arthritis." Regardless, Dr. Blinkenstaff performed arthroscopic surgery on the claimant on April 26, 2002. Respondent's Exhibit 1, page 55 indicates that claimant told Dr. Blinkenstaff that she fell three months ago. The claimant's left knee did not improve after the surgery, and she underwent a second arthroscopic surgery in July, 2002. Subsequent to the second surgery, the claimant experienced pain and swelling in the left knee and had to go to the emergency room. Her knee continued to pop. She was diagnosed as suffering severe degenerative arthritis. In August, 2002, an MRI showed no tears in the meniscus. Claimant's Exhibit 1, page 26 states that she suffers from a "chronic" lesion.

In September, 2002, the claimant fell on her left knee and twisted it. An x-ray showed mild degenerative changes. On September 29, the claimant, according to Respondent's Exhibit 1, page 113, sustained a motor vehicle accident, and she re-injured her left knee. The swelling and pain increased. On October 15, she was diagnosed as having extreme mal-alignment of her left knee. In November, 2002, the claimant fell and injured her left knee again. Even though Dr. Mulholland gave the opinion that her knee problems were related to her alleged compensable injury, he did not state the basis for that opinion. It is noted that neither Dr. Blickenstaff nor any of the other treating physicians gave that opinion. The Arkansas Workers' Compensation Commission has the authority to accept or reject medical opinions. Johnson v. Democrat Printing & Lithograph, 57 Ark. App. 274 944 S.W.2d 138 (1997).

The preponderance of the evidence in this case reflects that the claimant has failed to prove that she sustained a compensable injury, as it is defined under Arkansas Workers' Compensation law. The claimant did not have objective findings that would indicate a new injury or an aggravation of her pre-existing knee condition. The swelling and pain reported by the claimant after her alleged April, 2002 injury is not a new symptom. She experienced pain and swelling prior to April, 2002. An aggravation of a pre-existing condition is defined as a new injury with an independent cause, and must meet the requirements for a compensable injury. I do not find that there are different objective findings, subsequent to April, 2002, than existed prior to that date. There are no objective findings to support the claimant's assertion that stepping off the small stool caused internal or external physical harm. It is noted that the claimant submitted the medical bills to be filed by her private insurance. She, in fact,

did not file a workers' compensation claim until December, 2002. The claimant had two braces that she used for her left knee prior to April, 2002. The braces for the left knee had been provided by Dr. Armstrong approximately one month before the alleged injury in April, 2002. The preponderance of the evidence reflects that the claimant did not sustain a specific time and place of occurrence injury which arose out of and in the course of her employment. The preponderance of the evidence reflects that the existence of the injury is not supported by objective medical evidence. Donald Miller, Margo Liggins and Catherine Dunham appeared to be credible witnesses at the hearing. They testified that the claimant did not report a work related injury regarding her April 2002 problems. Plainly stated, I find that the claimant had, as she admitted, left knee pain and swelling for a long time. The instability caused claimant to request and receive left knee braces prior to April, 2002. The claimant saw a neurologist regarding her painful knees one week before she allegedly sustained a work related injury. She had problems before and after April, 2002. The preponderance of the evidence does not reflect, looking at objective symptoms, that the claimant injured herself at work. The claimant's actions subsequent to the date of the alleged work related injury indicated that she did not think the incident was work related. Everything considered, the preponderance of the evidence does not reflect that the claimant sustained a work related injury.

Because there has been no showing of compensability, the other issues need not be addressed. Therefore, the claim is denied and dismissed.

IT IS SO ORDERED.

DON N. CURDIE,
Administrative Law Judge

DC