

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208623

CHARLES O. WAYNE, EMPLOYEE	CLAIMANT
STONE CONTAINER, EMPLOYER	RESPONDENT
CRAWFORD & COMPANY, CARRIER	RESPONDENT

OPINION FILED NOVEMBER 26, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on November 3, 2003, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, anatomical impairment and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant and benefits must be denied.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on May 20, 2002 at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$323.00/\$236.00, in the event this claim is found to be compensable.

The claimant contended at the prehearing conference that he injured his left knee on May 20, 2002 in a specific lifting incident. He is seeking payment of medical expenses, temporary total disability from May 23, 2002 to June 9, 2002, a 2% rating as assessed by Dr. Rooney and attorney's fees. At the hearing, it was brought to this examiner's attention that the claimant's AR-C describes a rapid and repetitive injury. The claimant's prehearing questionnaire makes no mention of a gradual injury on May 17, 2002 and that issue was not discussed at the conference. The claimant is bound by the terms of the prehearing order.

The respondents contend the claimant was not performing employment services at the time of a specific incident and the medical records do not support a claim for a rapid and repetitive injury. The claimant received short-term disability benefits (\$750.00/Aetna) for which the respondents seek a credit.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The following witnesses testified at the hearing: the claimant; Charles Holloway, a co-worker; and Marshall Nash, the human resource director.

The claimant, age 52 (D.O.B. November 20, 1950), has a high school education. He worked for the respondent-employer for ten months making paper bags. He missed eleven days of work after his injury but is still employed with the respondent-employer. His job duties as a bag stacker included lifting, bending and stooping (Tr. p. 43).

On May 17, 2002, at 4:20 a.m. the claimant felt knee pain while bending down to place bags on pallets. He reported it to his lead man, Keith Shinnall, but no accident report was completed. The claimant told Mr. Shinnall that there was "something wrong with my knee and it feels like I am

just going to fall flat on my face.” At the time, he was working with Charles Holloway and David Moore. He continued to work with knee pain.

On May 20, 2002, around 11:50 p.m. the claimant’s knee popped and “gave away” as he was returning to his work station after plugging in a fan. The plant is not air-conditioned but the employer provides fans for the comfort of their employees. The claimant stated that he was working, became overheated and turned on the fan. He turned around to return to work, and injured his knee. He reported the injury to lead man, Keith Shinnall, human resource manager, Marshall Nash, and supervisor, Mark Sykes. The claimant asked Mr. Shinnall to take him to the emergency room but he wound up sitting at the plant until the end of his shift,(8:20 a.m.), when Mr. Nash took him to general practitioner, Dr. Cynthia Almond at Concentra Medical. The claimant described an injury in the tubing department when his left knee “just gave out.” Once the clinic refused to see him again, the claimant went to orthopedic surgeon, Dr. Thomas Rooney.

Mr. Nash’s assistant, Emily, gave the claimant an accident report form to complete. The report shows the claimant began work for the respondent-employer on February 23, 2001. He injured his left knee on May 20, 2002 and reported the incident on May 21, 2002. He described an injury while “stacking bags on Tuber #3/place handful on pallet. Approx. 3 yds. from table plugged in fan. Returned to table knee popped. Held on to table to avoid falling on floor.”

The claimant did try to return to work but was physically unable to perform his job. Mr. Nash refused to provide light duty since the claim was controverted. The claimant then applied for short-term disability benefits on May 23, 2002. The injury is described on the Aetna forms as “recurring” left knee pain “over the years” with symptoms that appeared “over time.”

On cross-examination, respondents' attorney emphasized that there is no mention of a May 17, 2002 injury on the AR-C, Dr. Rooney's medical records or the Aetna disability forms. The AR-C, dated July 12, 2002, describes a gradual, not a specific injury on May 20, 2002 with "rapid, repetitive motion, lifting, bending, stooping, twisting, turning; on feet eight to twelve hour shift, six to seven days a week." The claimant explained that he had no preexisting symptoms with his left knee but he did have similar problems with his right knee (Tr. p. 28-29).

Co-worker, Charles Hollowell, testified the claimant complained of knee pain in May but he was unsure of the date. Lead man, Keith Shinnall and supervisor, Mark Sykes were notified. The claimant did not work the rest of his shift. Mr. Hollowell did not know how or why the claimant's knee became symptomatic.

Human resource manager, Marshall Nash, testified he was notified of the injury on May 20, 2002. The claimant told him it happened while he was walking back to his work station. The claimant did not mention an earlier incident on May 17, or attribute his symptoms to a gradual injury.

MEDICAL EVIDENCE

The claimant's exhibit packet contains numerous medical reports concerning two other workers' compensation claims for epicondylitis in 1992 while working for Personal Products, treated by Dr. Michael Weber and Dr. Thomas Rooney and a 1996 injury to both arms, the right shoulder and neck while working for Target Distribution, treated by Dr. Kilgore. The relevance of these records is a mystery.

Counsel is reminded to submit only those relevant records which support his contentions. Irrelevant records slow down the review of the file and contribute to unnecessary transcript cost.

Once the paralegal or secretary has collected the records, it is the attorney's obligation to review those records before making stipulations or advancing contentions at the prehearing conference.

In the case at bar, the claimant was first examined by general practitioner Dr. Cynthia Almond on May 21, 2002 for an injury on May 20, 2002 at 11:50 p.m.

PATIENT STATEMENT:

"I was in the tubing dept when my left knee just gave out."

HISTORY OF PRESENT ILLNESS:

Pt states he was standing at work when his Lt knee "popped" and fell out from under him. The pain began abruptly 5-20-02.

PAST MEDICAL HISTORY:

Has had surgery on Lt knee "a long time ago." No hx of problems with Lt knee.

The claimant was diagnosed with a knee strain and prescribed medication and crutches.

Dr. Rooney began treating the claimant on May 23, 2002 with the following history of injury.

His left knee gave out on him while at work on Monday, three days ago, as he was walking back to his work station... I have seen him in the past for shoulder and right knee surgery and he is doing well in this regard.

Dr. Rooney aspirated fluid from the claimant's knee; prescribed medication, exercises and work restrictions. Arthroscopy was performed and the claimant was dismissed July 8, 2002.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," Smith v. Magnet Cove Barium Corporation, 212 Ark. 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of

employment and

- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability and
- 3) proof establishing the injury by objective medical evidence and
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

If the claimant fails to establish any of these elements of proof, the claim is not compensable and benefits must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

A compensable injury is one arising out of and in the course of employment. It is the claimant's burden to prove a causal relationship between the employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

An idiopathic injury is one whose cause is personal in nature, or peculiar to the individual. Because idiopathic injuries are unrelated to the employment, they are generally not compensable unless employment conditions contributed to the risk, thereby exacerbating the injury. ERC Contractor Yard & Sales v. Robertson, 335 Ark. 63, 977 S.W.2d 212 (1998).

The evidence of record shows the claimant's knee was symptomatic a few days before he reported an injury on May 20, 2002, and sought medical treatment. His working conditions did not contribute to this injury either specifically (by tripping, slipping or falling) or gradually (he was not

performing his job duties at the time he became unable to continue working). His knee, which had been symptomatic, simply “gave out” as he was walking to his work station. The claimant suffered an idiopathic injury to his knee for which the respondents are not liable.

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on May 20, 2002.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.
3. The claimant’s left knee condition is idiopathic.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge