

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F203688**

**WILLIAM N. WEBB, EMPLOYEE**

**CLAIMANT**

**DANIELS GENERAL CONTRACTORS,  
INC., EMPLOYER**

**RESPONDENT**

**FEDERATED MUTUAL INSURANCE COMPANY,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED DECEMBER 9, 2003**

Hearing before Chief Administrative Law Judge David Greenbaum on November 14, 2003, at Osceola, Mississippi County, Arkansas.

Claimant represented by Mr. Richard A. Reid, Attorney-at-Law, Blytheville, Arkansas.

Respondents represented by Mr. Eric Newkirk, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted November 14, 2003, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted October 15, 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 introduced as "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employee/employer/carrier relationship existed

at all relevant times, including April 4, 2002; that the claimant sustained a compensable injury to his right thigh as the result of a severe laceration on that date; that his average weekly wages were sufficient to entitle him to compensation rates of \$225.00 per week for temporary total disability and \$169.00 for permanent partial disability; that respondents paid temporary total disability, as well as medical expenses through May 15, 2002; and that the respondents controverted all benefits beyond those previously paid.

By agreement of the parties, the primary issue presented for determination was whether the claimant's complaints of right knee problems were causally related to the admitted injury. As will be set out further below, more appropriately, the issue is whether the claimant is entitled to further evaluation and possible treatment for his right knee complaints.

Claimant contended, in summary, that in addition to the admitted laceration to his right leg, he also sustained an injury to his right knee as the result of the incident; that respondents should be held responsible for additional medical treatment; specifically, an evaluation and treatment by an orthopedic specialist; and that a controverted attorney's fee should attach to any additional benefits awarded. The claimant reserved the issue of entitlement to indemnity benefits pending the evaluation requested.

The respondents contended that claimant did not sustain a compensable knee injury as the result of the work-related incident of April 4, 2002.

In addition to the claimant, his wife, Jamie Webb, and brother-in-law, Damien McDaniel, were called as corroborating witnesses. Rufus McDaniel and Joell Reina were called as witnesses for the respondents. The record is composed solely of the transcript of the November 14, 2003, hearing containing several medical reports, together with the telephone deposition of Deborah Willits, the respondent/insurance carrier's claims supervisor, which was introduced as "Respondent's Exhibit 1" and retained in the Commission file in bound form.

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 claimant has proven, by a preponderance of the evidence, that he is entitled to further examination and evaluation of his right lower extremity to determine the true nature and extent of the injury sustained as the result of the admitted, April 4, 2002, injury, specifically, further

evaluation and possible treatment by an orthopedic specialist which has been recommended by the claimant's authorized and primary treating physician, Dr. R. Scott Fergus.

4. Respondents are responsible for all reasonably, necessary medical costs for the claimant to be examined and evaluated by Dr. Joseph Yao, an orthopedic surgeon in Blytheville, Arkansas, pursuant to a valid referral from Dr. Fergus.
5. The claimant has shown, by a preponderance of the credible evidence, that his right knee complaints are either directly related to the April 4, 2002, incident, or a compensable consequence thereof and that respondents are responsible for further evaluation and treatment, if necessary.
6. The claimant has specifically reserved the issue of entitlement to additional disability benefits.
7. Respondents have controverted all benefits beyond those previously paid.

#### DISCUSSION

\_\_\_\_\_The claimant, William N. Webb, testified in his own behalf. The claimant is twenty-eight (28) years old. He dropped out of school in the 11<sup>th</sup> grade. He subsequently received his GED. The claimant denied having sustained any injuries, either prior, or subsequent to, his April 4, 2002, admitted injury with

the employer herein. The claimant's description of the injury is set out below:

Q Now, on April 4, 2002, you were employed by Daniels General Contractors?

A Yes, sir.

Q And what were you employed to do for them?

A I was a carpenter. I was employed as a carpenter to build forms and help pour concrete.

Q And had you while working for them ever received any prior injury to any part of your body?

A No, sir, not until the saw came out of the concrete and wacked me in my leg.

Q Now, I'm going to ask you about that. What did happen on April the 4<sup>th</sup>, 2002?

A We was laying – we was building trenches out at Maverick. I suppose they were for runoff for oil. We were building this certain trench and the guy I was working with laid the kick plate three-quarters of an inch too long. So we got down there. We told Junior – we had him come down there.

Q You pointed to –

A To Junior McDaniel, right there.

Q Who is seated here at the table with counsel?

A Yes, sir. Woody had him come down there and Woody told him – this is Phillip Woody – told him that we didn't have time to rip it down, just to pull that board up and cut that three-quarter of an inch off. Junior said we didn't have no time, the concrete was on its way, so to get down there and cut it off. He went back to his trailer. Me and Woody, we said, "Well, who wants to cut it off?" I said, "Well, I'll get down there and cut it off." I got down there and cut it. When I went to cut through the –

Q You were using what?

A I was using a big Old Milwaukee power saw, I mean, with a seven and one-eighth inch blade on that ripsaw. When I cut the – I set the depth gauge. When I set the depth gauge for the inch and a half of the board – because it was laying flat on the concrete. When I went to cut through it, when I got to the other end, it grabbed the concrete. When it grabbed the concrete, it shot out like a rocket, and when it shot out – and I was already –

Q When you say it shot out, are you talking about the saw?

A Yes, sir. Yes, sir, the saw, the blade grabbed the concrete, and immediately when the blade stopped, it through the saw back. When the saw come back, I was already kneeling and I had my right knee up in the air, and when I come back, it shot – it hit me right up against my right leg on the side of my knee. It knocked me plumb around, spun me around this way, then walked up my leg. It cut the bone, plumb to the bone, muscles, everything in half, and that's what happened that day. (Tr.14-16)

It is undisputed that the claimant sustained severe laceration of the right anterior thigh, complex, involving the anterior thigh muscles which, as reflected by the medical evidence, measured 20.0 cm. In length. Although the laceration did not directly come into contact with the claimant's kneecap, the scar did begin at the inner part of the claimant's right thigh as approximately the kneecap level, apparently working its way diagonally across the anterior thigh. Based on my personal observations, the scar was much closer to the level of the kneecap than the diagram shown by Dr. Marcus in a subsequent report following a patient evaluation on April 29, 2003. (Tr.16-18)(Jt. Ex. A, p.8)

The claimant's primary treating physician and general surgeon has been

Dr. R. Scott Fergus of Blytheville, Arkansas. Dr. Fergus treatment consisted primarily of cleaning and closing the severe laceration, together with follow-up care to determine whether the wound was healing properly, without evidence of infection. The claimant was admitted to the Baptist Memorial Hospital in Blytheville, Arkansas, immediately after the injury on April 4, 2002, and discharged the following day. The record reflects that the claimant made four (4) additional office visits to Dr. Fergus following his discharge from the hospital. The claimant last saw Dr. Fergus on May 15, 2002, at which time the claimant started walking without the use of crutches. On May 15, 2002, Dr. Fergus encouraged the claimant to increase his activities with the exception of squatting, while permitting the claimant to return to work on May 29, 2002.

The claimant contends that in addition to his severe laceration, he also sustained an injury to his right knee as the result of the accident. He further maintains that he notified Dr. Fergus about his knee problems, but that Dr. Fergus was understandably concerned about the severe laceration. The record reflects that after his medical release, the claimant returned to work for the employer herein and worked less than one day, at which time his employment was terminated. The claimant asserted that following his termination, he contacted Ms. Willits, the claims supervisor, and requested additional medical treatment and that Ms. Willits refused follow-up medical care. The record reflects that the claimant did not return to Dr. Fergus until March 26, 2003,

after Ms. Willits agreed to allow the claimant to return to Dr. Fergus for a follow-up examination. Again, the claimant related that the reason he did not seek additional medical treatment was because Ms. Willits refused treatment, and, in addition, the claimant related that he did not have the money to seek medical care on his own. The record indicates that a great deal of animosity existed between the claimant and Ms. Willits. As will be reflected further below, it is clear that she has frustrated the claimant's efforts in obtaining a follow-up examination and evaluation by an orthopedic specialist to determine the nature and extent of claimant's knee complaints. A preponderance of the credible evidence reflects that the claimant has continued to experience problems with his right leg, including problems involving the right knee.

Rufus McDaniel was called as a witness for the respondents. Mr. McDaniel's testimony primarily concerned the reasons for the claimant's termination which are not relevant to the issue before this Commission. He stated that the claimant returned to work on May 28, 2002, but did not complete the day. He stated that the claimant left the job-site without explanation and that he assumed the claimant simply quit. Mr. McDaniel further maintained that he observed the claimant walking at work on May 28, 2002, and that he did not observe the claimant limping. I did not find the testimony of Mr. McDaniel to be credible. Based upon the medical evidence, together with the corroborating testimony of claimant's witnesses, I am

persuaded that the claimant was indeed symptomatic and exhibiting physical problems on his return to work.

Jamie Webb, the claimant's wife, and Damien McDaniel, the claimant's brother-in-law, were both called as corroborating witnesses. Each related observing the claimant on a daily basis and both insisted that the claimant continued to experience significant problems with his right leg and knee.

Further, based upon the medical evidence, together with my personal observations of the scar on the claimant's right thigh, I do not believe that he was asymptomatic less than two (2) months post-injury. In addition, a review of Dr. Fergus' office notes reflects potential problems involving the right knee.

On April 30, 2002, Dr. Fergus stated:

This patient was seen today with good healing progressing. He is doing very well. He is now walking with balancing his crutches and in 2 weeks will be seen back and at that time he will discard his crutches and began [sic] to actively rehabilitate the knee against stress. (Emphasis supplied)

\* \* \* \* \*

The claimant returned to Dr. Fergus on May 15, 2002, at which time Dr. Fergus related the following:

This patient was seen today with good healing of his leg. He is now starting walking without crutches. He will increase his activity, increase his exercise with exception of squatting, and at the end of 2 weeks he will be allowed to return to work. (Jt. Ex. A, p.6)

Admittedly, there is considerable inconsistency in the record concerning

when the claimant first requested follow-up medical treatment, including an evaluation of his right knee. The claimant maintained that he was denied any further medical treatment by Ms. Willits following his release by Dr. Fergus. Deborah Willits testified that she closed her file on July 11, 2002, and that the next activity on the claim was January 8, 2003, when she received a phone call from the claimant requesting additional benefits. In view of the admitted personal conflicts between the claimant and Ms. Willits, I am persuaded that the claims adjuster advised the claimant that respondents would no longer be responsible for additional medical treatment after Dr. Fergus released the claimant to work because I firmly believe that he would have returned to a doctor earlier had medical treatment been authorized.

Ms. Willits testified that she closed her claims file on July 11, 2002, and that the first knowledge she had of any alleged right knee problem was January 8, 2003. Ms. Willits also indicated that the claimant had been released to return to regular duty, apparently without restrictions, on May 28, 2002, which, as reflected above, is inconsistent with the medical evidence. A portion of Ms. Willits' telephone deposition is set out below:

Q As far as your – actually I guess maybe the better question is when did the treatment of the thigh – when did you close your claim with regard to the thigh, or did you?

A In regard to the right thigh, the claim was closed on July 11<sup>th</sup>, 2002.

Q And how was that closed, did you close it yourself within your office or did you file something with the Commission or what happened?

A I completed the form for notifying the Workers' Compensation Commission that the claim was now closed. That was sent to the Workers' Compensation Commission along with a copy of the medical records we had in the file to date for Mr. Webb, and then a copy of the Form 4 was sent to Mr. Webb's attention.

Q And on that Form 4, I guess you're referring to a form – actually it's technically called a Form AR-4; is that correct?

A Yes, sir.

Q And it was entitled *A Closing Report*; is that accurate?

A Yes.

Q So you had closed your file on July 11, 2002; is that true?

A Yes.

Q When did you next have any activity on this claim?

A I note that I received a phone call from Mr. Webb on January 8<sup>th</sup> of 2003.

Q And what was the extent of your conversation, Deborah?

A Mr. Webb called asking to be compensated additionally for his injury. He made reference to issues that we classify as pain and suffering issues. I advised Mr. Webb that under Arkansas Workers' Compensation Law I was not allowed to compensate him for any issues in regard to pain and suffering.

Q And as far as the other injury – I'm sorry, strike that – after he indicated you indicated to him that he was not going to be compensated for pain and suffering type benefits, what was his response?

A He mentioned that his knee was bothering him.

Q Did he indicate to you which knee?

A The right knee.

Q Had Mr. Webb ever prior to January 8<sup>th</sup>, 2003 indicated to you that he had any problems with his right knee?

A No.

Q Did he say anything at all to you prior to January 8, 2003, about his right knee having any pain?

A No.

Q If Mr. Webb were to testify that he told you all along about his knee pain from the moment the incident occurred would that be accurate?

A No.

Q What did you decide to do about the knee injury?

A I advised Mr. Webb that I was not going to voluntarily authorize any evaluation or treatment of the right knee. It was my position that the right knee injury was not and did not arise out of the 4-4-02 incident. (Resp. Ex. 1, pp.9-12)

After further delays, and following a *pro se* change of physician request, respondents ultimately authorized the claimant to return to Dr. Fergus for a follow-up evaluation. Dr. Fergus next examined the claimant on March 26, 2003. His report of said date, together with an April 3, 2003, addendum, is set out below:

This patient was seen today complaining with pain in his knee is tender on the medial and lateral portion somewhat anteriorly. He

has pain in knee with movement. Patient states he has had this pain since he began ambulating in earnest after his crutch walking. He has not been back to my office with this but has no history of any other injury since his leg was struck with the power saw. The patient stated at that time the power saw knocked his leg out from under him and he may very well have had a cartilage problem or a ligament problem at that time in the knee, which has manifested itself, since he has become weightbearing and ambulatory.

The patient will be referred to Dr. Yao in consultation of this to have definitive care.

4/3/03: Patient's workers' comp insurance did not approve him seeing Dr. Yao. We will await further instructions from workers' comp. (Jt. Ex. A, p.7)

Joell Reina was called as a witness by the respondents. Ms. Reina is the Director of Case Management for National Comp Care. She was hired by the respondent/insurance carrier to medically manage this claim. A portion of Ms. Reina's testimony in response to questions from this administrative law judge which I found illuminating follows:

Q Ms. Reina, you have testified that apparently – was your last conversation with the Claimant on May 17<sup>th</sup>?

A Yes.

Q And it was at that time he was concerned about a major vein in his leg?

A Right.

Q And he advised you that he had been released to return to work on May the 28<sup>th</sup>, but you said that he was concerned about his ability to return to work?

A Right.

Q Did you document what his concerns were about being able to return to work on May 28<sup>th</sup>?

A He said that the doctor told him that he should avoid stressful bending, and I told him that that wasn't a part of what the physician wrote on the work status slip, so that there wasn't anything that I could do about that, but if he had concerns, he needed to talk to his doctor.

Q Okay. But he told you that the doctor wanted him to avoid bending?

A Stressful bending.

Q And did you attempt to contact the doctor to determine whether he had placed restrictions on his ability to – on his use of that particular injured leg?

A I did not bring my notes with me that have my conversations with the doctor, but typically in a situation I would clarify with the doctor to make sure there wasn't any restrictions.

Q I mean, do you normally contact the physicians or –

A Yes.

Q And did you at any time contact Dr. Fergus with regard to the Claimant's complaints?

A I don't remember.

Q I think in response to a question from Mr. Newkirk that you agreed, except for the initial conversation, that you normally got along with the Claimant and his wife, which is what they indicated to you. Did they also complain to you or would you agree that they complained about Ms. Willits?

A They at one point told me that they were not going to talk to her anymore, that they prefer all communication go through me

because they had a difficult time communicating with her.

Q And when was that communication made to you?

A That was made on May 17<sup>th</sup> as well.

Q So they advised you that they were having difficulty communicating with her and they weren't going to communicate with her, is that right?

A Right.

Q And did they indicate why, I mean, what the problem was with the claims adjuster?

A Well, what I documented here, Mr. Webb called and asked me if he cussed me during our first conversation, and I told him that I didn't remember specifically whether a curse word was used but that he was verbally aggressive to me. He just wanted to clarify that, I suppose.

Q But I guess my question is, though, did you document what their specific complaints were about Ms. Willits to you?

A What I wrote here was that, "States she will probably not talk to me again because I was cussing."

Q Then you closed your file, is that right?

A Right.

Q And, procedurally, would it be correct that you couldn't reopen your file without permission of Federated, is that right?

A Right.

Q And then Federated contacted you in mid-February and asked you to reopen the claim?

A Uh-huh.

Q But at the time they did so, do I understand that the reason that you advised Dr. Fergus to only address the laceration was because you had already been advised by Ms. Willits that they weren't going to accept the knee, is that right?

A Yes.

Q So would that have been the first time that you were aware that the Claimant was making complaints of knee problems?

A The first time I was aware was February the 18<sup>th</sup>.

Q And is that in the conversation with Ms. Willits or with the Claimant?

A Initially, Ms. Willits called to ask me to reopen my file because Mr. Webb was having complaints of right knee pain and swelling. At that point she advised me that treatment for the right knee wasn't authorized, but that he could go see Dr. Fergus to evaluate his lacerated area.

Q Okay. So she authorized an evaluation of the laceration, although the primary complaint was swelling in the right knee?

A Right.

Q Did you then talk to the Claimant about the right knee?

A Yes, I called him and asked him questions about how he was feeling, and at that point did an interview of all of his symptoms.

Q And did he at that time, in February, relate that his problems had existed since the initial injury the prior April?

A He told me that symptoms of his knee pain were worsening over time.

Q Did you ask him when they began?

A No.

Q So he basically told you that he was having progressive problems with his knees?

A Right.

Q With this knee, excuse me. Okay, and then did you then receive the reports from Dr. Fergus?

A From that?

Q Following the approval to have him reevaluate the laceration?

A Yes.

Q And did Dr. Fergus want him evaluated by a specialist?

A Yes.

Q And did you relate that to Ms. Willits?

A She got the doctor's note as well.

Q Okay. And, of course, she refused that evaluation?

A Right. (Tr.80-84)

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).

When a claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation, the Commission may find the existence of the causal connection. *Hall vs. Pittman Construction Company*, 235 Ark. 104, 357 S.W.2d 263 (1962); *Harris Cattle Company vs. Parker*, 256 Ark. 166, 506 S.W.2d 118 (1974).

The credible testimony of the claimant, as well as his corroborating witnesses, indicating that the claimant has at all time continued to experience problems with his right lower extremity, together with the medical evidence, establishes that causal connection. *Kearby vs. Yarborough Brothers Gin Co.*, 248 Ark. 1096, 455 S.W.2d 912 (1970); *Exxon Corp. vs. Flemming*, 253 Ark. 798, 489 S.W.2d 766 (1973).

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably

necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has proven, by a preponderance of the evidence that he is entitled to the additional benefits requested, specifically, an examination and evaluation by an orthopedic surgeon, Dr. Yao, by referral of an authorized, treating physician, together with further treatment if warranted. Accordingly, I hereby make the following:

#### AWARD

Respondent, Federated Mutual Insurance Company, is hereby directed and ordered to pay for an orthopedic examination and evaluation by Dr. Joseph Yao. Further, Dr. Yao is authorized to perform any additional diagnostic studies, as well as make any valid referrals that he deems reasonably necessary in order to ascertain the true nature and extent of claimant's admitted injury.

Because claimant's entitlement to additional disability benefits has been specifically reserved, and in view of the restrictions and requirements of A.C.A. §11-9-715, attorney's fees are, likewise, reserved.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge