

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204392

LEONARD BALLANCE, EMPLOYEE	CLAIMANT
K. C. CONTRACTING, EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE, INSURANCE CARRIER	RESPONDENT

**OPINION FILED JANUARY 21, 2004**

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Texarkana, Miller County, Arkansas.

The claimant was represented by GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

The respondents were represented by R. SCOTT MORGAN, Attorney at Law, Pine Bluff, Arkansas.

**OPINION AND ORDER**

A hearing was held in this matter on October 23, 2003. A prehearing conference was conducted on August 19, 2003, and a prehearing order was filed on August 19, 2004. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

During the prehearing conference, the parties agreed to the following stipulations:

1. The employer/employee/carrier relationship existed on February 27, 2002.
2. The claimant sustained a compensable left knee injury on February 22, 2002.
3. On February 22, 2002 the claimant was earning an average

weekly wage of \$350.00 which entitles him to a total disability compensation rate of \$233.00, and a partial disability compensation rate of \$175.00.

4. The respondents have accepted liability for a five percent (5%) permanent impairment rating.
5. The respondents have controverted any benefits beyond December 17, 2002.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether a recommended left knee replacement is reasonably necessary for treatment of the claimant's compensable injury.
2. Whether the claimant is entitled to temporary total disability compensation for the period extending from December 17, 2002 to a date yet to be determined.

From a review of the record as a whole, to include the testimony of the claimant, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

#### **FINDINGS AND CONCLUSIONS**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. The respondents controverted this claim in its entirety.

4. The preponderance of the evidence establishes that the claimant's total left knee replacement is reasonably necessary for treatment of his compensable injury. The respondents are liable for the claimant's total left knee replacement. The respondents controverted liability for the claimant's total left knee replacement.

### DISCUSSION

The claimant was employed by the respondent/employer as a chicken catcher. The claimant sustained an admittedly compensable injury to his left knee on February 22, 2002, when he stepped in a hole filled with water. According to his testimony, he felt something snap when he stepped into the hole and he fell to the ground. He attempted to continue working, however, his knee began to swell. After he stopped working he began to experience pain in the knee. The claimant had previously injured his knee in either 1979 or 1980, when he was involved in a motor vehicle accident. Surgery was performed on the knee at that time, however, after he recovered from that injury he was able to return to work and did not experience any significant problems with the knee.

After his injury with the respondent/employer the claimant ultimately came under the care of Dr. Chris Alkire, an orthopedic specialist. After seeing the claimant on March 15, 2002, Dr. Alkire opined that the claimant was suffering from an internal derangement of his left knee, and he ordered a MRI.

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This MRI revealed degenerative arthritis of the left knee and evidence of a lateral minicus tear. Dr. Alkire also indicated that his examination of the claimant's left knee revealed significant effusions of the knee joint and pain along the joint line. On July 3, 2002, Dr. Alkire performed a diagnostic arthroscopy with excision of the synovial shelf and anteromedial compartment, with a partial medial and lateral meniscectomy . Claimant continued to complain of pain and other problems after the procedure. The medical reports indicated that Dr. AlKire continued to follow the claimant and that the claimant continued to complain of problems with his left knee that were significant enough to prevent him from working. In a report dated September 5, 2002, Dr. Alkire indicated that he thought the claimant should be able to return to full duty work chasing chickens in about two weeks. However, the claimant has never returned to work. In addition, Dr. Alkire indicates in a report dated October 3, 2002, that the claimant had experienced an increase in problems after he felt a pop in his left knee while taking the trash out. In that report Dr. Alkire made the following comments:

“I'm not sure why this patient [has] so much pain and discomfort. I've gone over his arthroscopic pictures again today which did show some chondromalicia in both medial and lateral femoral condyle. He could be having some increased arthritic changes in spite of the fact that he had partial meniscectomy medially and laterally. I've told him today that I don't want to do anymore surgery at his young age if we don't have to. Because of his arthritis changes, he may be a

candidate for a [total knee replacement] at some point, but only as a last resort....”

In a narrative statement dated November 14, 2002, Dr. Alkire indicated that the claimant was receiving Synvisc injections to his knee and that the claimant would likely need a knee replacement if the injections failed. Finally, in a clinic note dated December 2, 2002, Dr. Alkire concluded that “this patients only chance of relief is going to be a total knee replacement.”

The respondents subsequently had the claimant examined by Dr. James Mulhollan for an Independent Medical Examination. After examining the claimant, as well as his diagnostic studies, Dr. Mulhollan provided the following opinion:

“I think he sustained an injury to an already very degenerative joint. It is very unfortunate that he did this. At the same time, I cannot imagine why the insurance company that is responsible for his injury would be responsible for knee replacement since the degenerative process in the knee is clearly more than 50 percent of the patient’s problem.”

In a narrative statement dated January 13, 2003, Dr. Alkire opined that the claimant’s “current symptoms and need for further surgery; i.e. a knee replacement to his left knee, has been brought on by an exacerbation of the symptoms of his pre-existing arthritis that was worsened from his 2/25/02 on-job injury. Dr. Mulhollan also provided deposition testimony and in that deposition testimony Dr. Mulhollan also agreed that the claimant’s

compensable injury aggravated the underlying degenerative condition and accelerated the need for the total knee replacement. However, Dr. Mulhollan did continue to reiterate that the underlying degenerative condition was responsible for more than fifty percent (50%) of the claimant's problems. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (1987). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission, Feb. 17, 1989 (Claim No. D612291). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, Dec. 13, 1989 (Claim No. D511255).

In the present claim I find that the total knee replacement is reasonably necessary for treatment of the claimant's compensable injuries. The fact that the claimant was suffering from pre-existing degenerative changes does not relieve the respondents for liability for the effects of the compensable injury. Although the medical evidence indicates that the claimant's degenerative

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condition may have eventually resulted in the need for the total knee replacement, the medical evidence also establishes that the compensable injury exacerbated the claimant's need for that surgery. Consequently, I find that the respondents are liable for the claimant's total knee replacement.

**ORDER**

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein, along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809 (Cumm. Supp. 1997).

IT IS SO ORDERED.

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HON. C. MICHAEL WHITE  
Administrative Law Judge

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