

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F401636

TONY BURDINE,  
EMPLOYEE

CLAIMANT

TIM CURRY LOGGING, INC.,  
EMPLOYER

RESPONDENT

CAPITAL CITY INSURANCE CO.,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED OCTOBER 28, 2004**

Hearing conducted before ADMINISTRATIVE LAW JUDGE C. MICHAEL WHITE, in El Dorado, Union County, Arkansas.

The claimant was represented by HONORABLE MATTHEW THOMAS, Attorney at Law, El Dorado, Arkansas.

The respondent was represented by HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on July 27, 2004 in El Dorado, Arkansas. A prehearing order was entered in this case on April 30, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or at the start of the hearing and are hereby accepted:

1. The employer/employee/carrier relationship existed on January 15, 2004.

2. The respondents have controverted this claim in its entirety.

3. The claimant's average weekly wage was \$385.00 per week producing compensation rates of \$257.00 per week for temporary total disability and \$193.00 per week for permanent partial disability.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained an injury that is compensable under the Arkansas Workers' Compensation Law.

The record consists of the July 27, 2004 hearing transcript and the exhibits contained therein.

#### **DISCUSSION**

Tony Burdine was employed by Tim Curry Logging as a skidder operator when, according to Mr. Burdine's testimony, on January 15, 2004 his foot slipped while standing on a skidder tire and he fell in between the blades on the ground with his leg folded back behind him. Mr. Burdine acknowledged that there were no witnesses to the alleged incident. Mr. Burdine reported an injury to "Jody", who

reportedly told Mr. Burdine to catch a ride in a truck back to go see a doctor.

A February 3, 2004 letter from Kellie S. Chaloupka, claims adjuster for Southeastern Claim Services, Inc., indicates that Mr. Burdine presented to Dr. Hatley on January 15, 2004. Neither party presented Dr. Hatley's medical report into the record. However, Ms. Chaloupka apparently reviewed the report from January 15, 2004, and according to Ms. Chaloupka, Dr. Hatley did not note any swelling or recent bruising in his medical report, although Mr. Burdine did report a new trauma. On referral, Dr. Dwayne Daniels performed arthroscopic surgery on March 30, 2004 for debridement of a near total circumference lateral meniscus tear in Mr. Burdine's left knee.

At this time, Mr. Burdine seeks reimbursement of his medical expenses and an appropriate period of temporary total disability benefits for the period that he was off work through the date of the hearing held on July 27, 2004 and continuing to a date yet to be determined.

As a threshold matter, the respondents contend that Mr. Burdine did not suffer a compensable injury under the Arkansas Workers' Compensation Act, and that his medical treatment described above is associated with a pre-existing

or underlying condition for which these respondents are not liable.

The respondents contend that there are no objective findings of a current traumatic incident, and that Mr. Burdine has experienced a recurrence of a prior problem for which these respondents are not liable. To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury; and (4) that the injury was caused by a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4) (A) (i) (Repl. 2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

With regard to the objective findings requirement, Ark. Code Ann. § 11-9-102(4) (D) (Repl. 2002) provides that "A compensable injury must be established by medical evidence supported by objective findings as defined in subdivision (16) of this section." In this regard, Ark. Code Ann. § 11-9-102(16) (A) (i) provides that "'Objective findings' are those findings which cannot come under the voluntary control of the patient."

The record must establish a causal connection between any objective findings and the alleged work-related injury which those findings are intended to support. See Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5(1998).

In the present case, the objective medical finding in the record which might support the existence of a new knee injury on January 15, 2004 is Dr. Daniels' March 30, 2004 surgical observation of a diffuse irregular near total circumference lateral meniscus tear which he debrided during arthroscopic surgery. I further note that in his prior March 26, 2004 office note, Dr. Daniels assessed this knee condition as "an acute tear."

On the other hand, Dr. James Mulhollan, who had previously performed an evaluation of Mr. Burdine on

February 6, 2004 concluded that Mr. Burdine's current knee problems could possibly have occurred in January of 2004 but also could possibly have pre-existed that alleged injury in light of the observations of Dr. Hefley, who treated the claimant for prior knee problems in 2001.

In this regard, I note that Dr. Hefley performed an anterior cruciate ligament reconstruction and a lateral meniscectomy to the claimant's left knee on October 31, 2000 following a prior work-related knee injury for a different employer. However, the claimant did not undergo physical therapy after that surgery and unfortunately developed chronic stiffness and loss of motion in the knee leading to a persistent limp.

Then, on February 7, 2001, Dr. Hefley reported in follow-up that approximately four weeks earlier Mr. Burdine was working in the yard and felt something pop in his knee which had since that time caused severe pain and a limp. Dr. Hefley's impression was that Mr. Burdine may have torn his medial meniscus or re-torn the remnant of the lateral meniscus which he had removed during surgery the previous October. Dr. Hefley ultimately recommended arthroscopic surgery, including a possible meniscectomy, when Mr. Burdine's symptoms persisted. However, no additional MRI or

surgery were ever ultimately performed prior to the MRI and surgery at issue in this claim performed in 2004. Notably, when Dr. Daniels performed the arthroscopic surgery in 2004, as discussed above, Dr. Daniels determined that the medial meniscus was intact but the lateral meniscus was torn.

In light of Dr. Hefley's 2001 impression that Mr. Burdine was at that time experiencing knee symptoms indicative of a meniscal tear, in light of Dr. Hefley's 2001 recommendation for additional arthroscopic surgery which was never performed, and in light of Mr. Hamilton's testimony that Mr. Burdine shortly before his own reported injury told Mr. Hamilton that Mr. Hamilton should make out like Mr. Hamilton's non-work back injury at home had actually occurred by slipping on a loader at work, I find that Mr. Burdine has failed to meet his burden of proof by a preponderance of the evidence that the lateral meniscus tear observed by Dr. Daniels during surgery was causally related to an injury allegedly sustained on January 15, 2004. Because there are no other objective findings in the record which might alternatively support the existence of a left knee injury on January 15, 2004, I find that Mr. Burdine has failed to establish the existence and extent of any left knee injury allegedly sustained on January 15, 2004 with

medical evidence supported by objective findings.

Therefore, I find that Mr. Burdine has failed to establish by a preponderance of the evidence that he sustained a compensable left knee injury on January 15, 2004.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employer/employee/carrier relationship existed on January 15, 2004.

2. The respondents have controverted this claim in its entirety.

3. The claimant's average weekly wage was \$385.00 per week producing compensation rates of \$257.00 per week for temporary total disability and \$193.00 per week for permanent partial disability.

4. The claimant has failed to establish by a preponderance of the evidence that the objective findings of Dr. Daniels of a left knee lateral meniscus tear observed by MRI and during surgery are causally related to any injury allegedly sustained on January 15, 2004.

5. The claimant has failed to establish the existence of a left knee injury allegedly sustained on January 15, 2004 by medical evidence supported by objective findings.

6. The claimant has therefore failed to establish that he sustained a compensable left knee injury.

**ORDER**

For the reasons discussed herein, this claim must be and hereby is respectfully denied and dismissed.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge