

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305559

JOHN P. COLLIER

CLAIMANT

**CITY OF LITTLE ROCK
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED NOVEMBER 22, 2004

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE KENNETH A. OLSEN, Attorney at Law,
Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law,
Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on September 15, 2004, in Little Rock, Arkansas. A prehearing conference was held on April 28, 2004 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. There was an employer-employee relationship on May 21, 2002.
2. The claimant's average weekly wage is \$617.

The claimant contends that he sustained a knee injury at work on May 21, 2002 and is entitled to medical benefits, temporary total disability benefits from August 23, 2002 through December 3, 2002, and attorney's fees.

The respondents contend that the claimant cannot meet his burden of proof that he sustained a compensable knee injury arising out of and in the course and scope of his employment on May 21, 2002. The respondents contend instead the claimant had a pre-existing condition for which he has sought treatment. Alternatively, if the claim is found to be compensable, respondents contend the claimant would not be entitled to benefits until May 19, 2003, when he filed his Form AR-C. The respondents also request an offset of benefits pursuant to Ark. Code Ann. §11-9-411.

Issues to be litigated:

1. Compensability of a knee injury.
2. Medical benefits.
3. Temporary total disability benefits from August 23, 2002 through December 3, 2002.
4. Attorney's fees.

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. There was an employer-employee relationship on May 21, 2002.
2. The claimant's average weekly wage is \$617.

3. The claimant has proven by a preponderance of the evidence that he sustained a compensable knee injury arising out of and in the course of his employment.

4. The respondents are responsible for the reasonable and necessary medical the claimant has pursued.

5. The claimant has proven by a preponderance of the evidence that he remained in his healing period and had not returned to work from August 23, 2002, through December 4, 2002.

6. The respondents are entitled to an offset for benefits previously provided pursuant to Ark. Code Ann. §11-9-411.

DISCUSSION

The claimant, 42 years old, is a Technician II, working on sedan vehicles for the City Fleet Services and has been so employed for 16 years. The job involves bending, stooping, kneeling on your knees, laying on your back and stomach, crawling, walking the floor all day, stretching and a myriad of body positions. The claimant described an injury to his left knee occurring on May 21, 2002, when he was outfitting patrol units. The claimant went to get a tool and bumped his knee into the front bumper and hit the license plate. According to the claimant, he reported his knee problem within a couple hours to his immediate supervisor, Mr. Donny Arnold, and the incident was witnessed by Perry Wyse, a student intern. The claimant testified that the accident procedure is the supervisor gets with the coordinator of safety and the safety coordinator completes the paperwork for a work injury.

According to the claimant, he also reported his work injury to the safety coordinator on the day of the injury and was told the paperwork would be completed later. The claimant sought medical treatment on his own about two weeks to a month later. The claimant was referred to Dr. Kenneth Martin, a specialist, on July 3, 2002. According to the claimant, he underwent some physical therapy and he reported this to Tony Bell. The claimant underwent knee surgery in August 2002 and was released to return to work on December 4, 2002, using crutches.

The claimant's testimony was that he requested paperwork be completed for his work injury on several occasions before the surgery. The claimant filed an AR-C form in May 2003, on his own. The claimant's group health insurance paid medical benefits relating to his knee surgery. The claimant testified that he kept thinking Tony Bell would complete the required paperwork.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2003). 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. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant has proven by a preponderance of the evidence that he sustained a compensable knee injury arising out of and in the course of his employment on May 21, 2002. I found the claimant to present a plausible account of how he sustained his knee injury. He presented testimony that the incident was witnessed by a student intern, Perry Wyse, and that he reported the incident to his immediate supervisor, Don Arnold. Both Mr. Wyse and Mr. Arnold corroborated the claimant's account of the work incident. The claimant testified that he also reported the incident to Tony Bell, administrator in charge of safety reports, and Mr. Wyse corroborated the claimant's account as he personally witnessed Mr. Bell discussing with the claimant his knee injury the morning following the incident. I find the claim was properly reported contemporaneous with the incident and the claimant sought medical treatment on his own after not being scheduled for such by the respondent employer.

The respondents contend there was no notice until May 19, 2003, and that the claimant's condition was due to a pre-existing condition. Respondents rely on the testimony of Tony Bell, administrative assistant for the City, who testified that the claimant came to him after he had seen the doctor for his knee but before the surgery; however, Mr. Bell stated the claimant advised him he did not know when or how his knee problem happened. Mr. Bell did tell the claimant he had one year from the date of the incident or of his last doctor's visit to file a claim. Mr. Bell denied the claimant spoke with him about hurting his knee on May 21, 2002.

Further, respondents rely on the testimony of Michael Knott, Safety Loss Control Specialist for the respondent employer, who testified that he first became aware of the claimant's work injury when the claimant filed an AR-C form. Mr. Knott advised that the proper procedure for filing a work injury is to give your supervisor notice and the supervisor would file an accident report and a Form One. Mr. Knott testified if the supervisor was notified of the work injury, that was proper notice. Mr. Knott testified that the claimant's supervisor, Don Arnold, was terminated from the City for using "the n word" (T., p. 66) and this was about the end of 2002. The claimant has made other work injury claims and knew the paperwork process.

The claimant relied on the testimony of Donny Arnold, former supervisor for the City, who testified that he supervised the claimant from 2000 to March of 2003. Mr. Arnold testified that he remembered the claimant telling him in the early part of 2002 that he bumped his knee about an hour ago. Mr. Arnold testified that when an injury is reported, the paperwork is prepared by Tony Bell and placed on the supervisor's desk. After the supervisor reviews and signs the paperwork, it is given back to Tony Bell and he places it through the appropriate channels. Mr. Arnold testified that it was probably a week after the incident that he spoke with Tony Bell about completing the paperwork and followed up with Mr. Bell once or twice more. Mr. Arnold testified that he believed Tony Bell just forgot to complete the paperwork; however, he was certain Mr. Bell knew of the claimant's knee injury being work related.

The claimant also relied on the deposition testimony of Perry Wyse, a student intern who trained with the respondent employer from May 2001 through July 2003. Mr. Wyse worked with the claimant in 2002 and testified that he witnessed the claimant

bumping his knee on the front bumper of a police car and he yelled when this happened. Mr. Wyse further testified that he heard the claimant and Tony Bell talking about the claimant's knee the morning after the incident. Mr. Wyse stated that he spoke with the supervisor, Don Arnold, about the claimant's knee problems and about how the accident happened. Mr. Wyse testified that the claimant began using a knee brace and then a crutch sometime after the incident. Mr. Wyse left the City on good terms and no longer is interning or working there.

In the present case, we have the claimant's testimony being a 16-year employee of the respondent, the immediate supervisor's testimony and a witness to the incident giving consistent testimony about a work incident where the claimant's knee was hurt. The respondents rely on the testimony of Tony Bell that he was unaware of the claimant's knee injury at work on May 21, 2002. The respondents contend the first notice of a work injury was when the claimant filed his AR-C form in May 2003. I simply was not persuaded by Tony Bell's recollection of the events and his actions. I give more weight to the testimony of the claimant, the immediate supervisor and the witness.

The claimant sought medical treatment and was diagnosed with a torn medial meniscus and underwent surgery on August 22, 2002, for the repair. The torn meniscus satisfies the "objective finding" requirement of the statute. Ark. Code Ann. §11-9-102(16). The respondents contend the claimant's problems are the result of a pre-existing condition and have supplied a vast amount of medical records. I was unable to find any left knee problems in the large volume of medical evidence supplied. The claimant has had a number of other problems and these were documented but seemed to be unrelated to the left knee condition. On July 21, 2003, Dr. Martin gave a

medical opinion that the claimant's condition was caused or combined with a pre-existing condition to cause the claimant's need for knee surgery. I find respondents are responsible for all the reasonable and necessary medical treatment the claimant has pursued for treatment of his left knee injury, as well as finding the claimant gave timely notice of the injury to his supervisor.

The claimant next contends that he is entitled to temporary total disability benefits from August 23, 2002 through December 3, 2002. The claimant sustained a scheduled injury, left knee. The claimant is, therefore, entitled to temporary total disability compensation while he/she is within his/her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a)(Supp. 1999); *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The medical evidence documents that the claimant underwent knee surgery on August 23, 2002 and was released to light/sedentary work on December 10, 2002. The claimant testified that he remained off work following his knee surgery but was released by Dr. Martin on December 3, 2002 and returned to work on December 4, 2002. I find the claimant has proven by a preponderance of the evidence that he remained in his healing period and did not return to work until December 4, 2002 and is entitled to temporary total disability benefits from August 23, 2002 through December 3, 2002.

The respondents ask for an offset for benefits paid pursuant to Ark. Code Ann. §11-9-411. I find that respondents are entitled to an offset for benefits paid pursuant to Ark. Code Ann. §11-9-411, which provides for an amount equal to, dollar for dollar, the amount of benefits the injured worker has previously received for the same medical

services or period of disability. See, *Dooley v. Automated Conveyor Systems*, ___ Ark. App. ___, ___ S.W.3d ___ (2004).

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable knee injury arising out of and in the course of his employment. The respondents are responsible for the reasonable and necessary medical the claimant has pursued. The claimant has proven by a preponderance of the evidence that he remained in his healing period and had not returned to work from August 23, 2002 through December 4, 2002. The respondents are entitled to an offset for benefits previously provided pursuant to Ark. Code Ann. §11-9-411.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**