

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F302121

PHILLIP GARTON

CLAIMANT

USA TRUCK, INC.
SELF INSURED

RESPONDENT

OPINION FILED FEBRUARY 11, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by J. RODNEY MILLS, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on November 13, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 11, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On February 17, 2003, the relationship of employee-employer-carrier existed between the parties.

3. On February 17, 2003, the claimant sustained a compensable injury to the right knee

4. Medical services have been paid to June 10, 2003.

5. Temporary total disability benefits have been paid to April 17, 2003.

By agreement of the parties the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Temporary total disability benefits from April 17, 2003 to a date to be determined with credit for any periods of time which the claimant may have been working.

2. Claimant's entitlement to additional medical.

3. Attorney's fees/controversion.

In regard to the foregoing issues the claimant contends that he had an injury on February 17, 2003 from an accident in which he slipped and fell on ice injuring his right knee.

In regard to the foregoing issues the respondents contend that his claim has not been controverted. All benefits due and owing the claimant as a result of his compensable injury have been paid, or are being paid by the respondent. The medical treatment sought by the claimant is not authorized, reasonable and/or necessary as a result of a compensable injury. The claimant has been fully released to regular duty by his treating physicians, and suitable employment has been made available to the claimant, which he has refused. In the alternative, the claimant has failed and refused to comply with medical directions of his treating physicians, and the respondent is not liable for any injury or aggravation resulting from the claimant's failure or refusal.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical evidence marked Claimant's Exhibit No. 1. The respondents submitted medical evidence marked Respondents' Exhibit No. 1 and additional documentation marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was 44 years old and began working for the respondent in January 2003 as an over the road truck driver. The claimant testified and it has been stipulated by the parties that he sustained a compensable injury to his right knee on February 17, 2003, when he slipped on some ice. The claimant testified that he received medical treatment in Florence, South Carolina, the same day of his incident. The claimant testified that as a result of his right knee injury he has had swelling, discomfort and difficulty walking. The claimant testified that the respondents sent him to their terminal in Memphis where he was to stay and receive medical treatment. The claimant agreed that he was in this facility from February 17, 2003, to April 17, 2003. The claimant testified that he was receiving his workers' compensation benefits in the amount of \$558 every two weeks out of which he had to purchase his own food. The claimant testified that the respondents did pay for his medical treatment while he was in Memphis.

The claimant testified that the respondent sent him to Dr. Lochemes and that Dr. Lochemes put him in a brace which seemed to irritate his knee symptoms. The claimant explained that he had

swelling and the nerves were twitching in his knee. The claimant testified that the only doctor he saw in Memphis besides Dr. Lochemes was Dr. Tod Robinson. The claimant testified that he was given restrictions of no lifting over ten pounds, no squatting, no kneeling and no climbing stairs. The claimant testified that the activities required of his job while working for the respondent exceeded these restrictions. The claimant testified that even staying at the terminal required him to violate his restrictions in that he had to climb the stairs in order to take a shower each day. The claimant testified that when Dr. Lochemes wrote in his report that he was approximately half way to recovery, in the claimant's opinion his symptoms had not changed at all and were exactly the same. The claimant agreed that after the second or third visit with Dr. Lochemes an MRI was performed on his knee. The claimant testified that Dr. Lochemes discussed with him the possibility of having his right knee scoped. The claimant stated that Dr. Lochemes recommended injections in his knee prior to any scope being performed but he had rejected any type of injection because he understood that this type treatment was just temporary. The claimant testified that it was Dr. Lochemes who brought up possibly scoping his knee if it did not improve. The claimant stated that the doctor's attitude changed toward him in that he seemed to get mad because he rejected the idea of having shots in his knee. The claimant testified that Dr. Lochemes released him from his care on April 10, 2003, with restrictions of ten pounds continuously lifting, twenty-five pounds intermittent lifting and to restrict

climbing, kneeling, bending and stooping. The claimant testified that his job with the respondent exceeded these restrictions.

The claimant testified that before working for the respondent he had been driving trucks after he had gotten out of the army following Desert Storm. The claimant testified that while on active duty in Desert Storm he was hit in the back of his right knee with a piece of shrapnel for which he received medical treatment. The claimant testified again that for the past twenty to twenty-one years he has been driving trucks.

The claimant testified that he last saw Dr. Lochemes on April 17, 2003, at which time his symptoms were just the same as they were when he first began to see the doctor. The claimant explained that he was still having swelling and nerve pain in between the bones. The claimant testified that he could not go back to work for the respondent because of the condition of his leg but that he did seek employment elsewhere. The claimant testified that the respondents did offer him a job but he refused it.

The claimant testified that he was allowed a change of physician to be seen by Dr. Varner. The claimant testified that he went to work for U. S. A. Motor Express hauling containers. The claimant testified that this work was local work and not over the road truck driving. The claimant testified that his work was essentially the same as that for the respondent but that he wanted to see how his leg would hold out. The claimant testified that for the two-week period of time that he worked for U. S. A. Motor

Express his knee did not get any better. The claimant testified that he still had the pain and swelling in his right knee.

The claimant testified that he has gone to Dr. Frazier on his own. The claimant testified that it is his understanding that Dr. Frazier has recommended a scope for his right knee so that they can see what is wrong. The claimant testified that Dr. Frazier is an orthopedist as is Dr. Varner and Dr. Lochemes.

The claimant testified that currently he is not working because of the problems he is having with his knee. The claimant testified that he still has swelling and that he is losing the feeling in his leg and falling.

On cross examination, the claimant agreed that when he was sent to Memphis to stay and be medically treated for his right knee injury, he was first seen by Dr. Robinson who had him undergo physical therapy. The claimant testified that he then was referred to Dr. Lochemes who he first saw on February 27, 2003. The claimant agreed that Dr. Lochemes had him have x-rays as well as an MRI of his right knee. The claimant agreed that in his deposition, he had reported to the claimant's attorney that he had a fear of needles and that is why he refused the recommendation by Dr. Lochemes for injections in his knee. The claimant agreed that Dr. Lochemes released him on April 10, 2003, and after looking at page 20 of the exhibits, the claimant read that the doctor released him, "current work status; regular duty." The claimant further agreed that Dr. Lochemes had in fact released him to return to work on regular duty and not with limitations. The claimant testified

that he did not feel that he could return to work at regular duty at that time and, therefore, refused work from the respondent. The claimant indicated that at that time was when he requested a change of physician and was authorized to be seen by Dr. Varner. The claimant agreed that he was seen by Dr. Varner on June 10, 2003, and he had gone to work for U. S. A. Motor Express in July. The claimant agreed that he did not try to return to work for anyone after he last saw Dr. Lochemes and before he went to work for U. S. A. Motors. The claimant agreed that Dr. Varner also released him to return to regular duty work. The claimant agreed that he had a conversation with Mr. Tom Heff who is a supervisor for the respondent. The claimant agreed that he and Mr. Heff discussed his returning to work and a job was offered to the claimant to return him to work as an over the road truck driver but that he had turned this offer down. The claimant agreed that he has made no effort to return to work since he was seen by Dr. Frazier and no doctor took him off work while he was working for U. S. A. Motors.

A radiologist report dated February 17, 2003, sets forth that the claimant's right knee was tested and the test revealed normal joint spaces, the bones were normal and there was no effusion or soft tissue calcification present. The conclusion of this test was: normal right knee. Dr. Todd Robinson writes on February 19, 2003, that the claimant presents himself with right knee pain and mild swelling after a fall with a twisting motion. After examination, the claimant was assessed with a knee strain and medications were prescribed as well as physical therapy. Dr.

Robinson writes again on February 21, 2003, that he has seen the claimant for recheck of his knee after several weeks of physical therapy. After examination, it was noted that the claimant cannot squat and has mild pain on maximum flexion. The claimant's medications were continued as well as his physical therapy for one more week and he was restricted as to no climbing stairs or ladders, no squatting and no kneeling. On February 26, 2003, Dr. Robinson writes that after medication and five to six sessions of physical therapy, the claimant continues to complain of knee pain, noting that the claimant's pain is exacerbated by movement but was moderately, transiently relieved with the afore mentioned medical regiment. Dr. Robinson's examination of the claimant's right knee indicates that his knee joint was stable, had good range of motion but reproductive pain with maximum flexion/extension, good strength, no erythema, no effusion and no crepitance. The claimant's medications were continued and he was referred to an orthopedic surgeon. The claimant was seen by Dr. John Lochemes on February 27, 2003. Dr. Lochemes sets forth a history of the claimant's injury as well as his previous treatment program. The doctor writes that an examination shows a well developed well-nourished gentleman who's right knee has 0-100 degrees of flection. He also has pain to palpitation in the medial collateral ligament. There is no significant total disruption of the MCL. Dr. Lochemes writes that he believes there is an increased laxity with a softer end point but thinks it is effusion, noting that there is no evidence of bruising. Dr. Lochemes assesses the claimant with

having a right knee MCL strain and recommended a Bledsoe boot for support. The doctor notes that he wants to see the claimant in two weeks at which time he should be half way to recovery at which time they will start an aggressive strengthening program. The claimant's medications were continued and he was restricted to ten pounds continuous lifting, twenty-five pounds intermittent lifting and he is restricted from climbing, kneeling, bending, stooping and no driving. On February 13, 2003, Dr. Lochemes writes that on the medial side of the claimant's knee he definitely has fullness and reports pain with palpitation of the MCL origin on the femoral condyle. The doctor writes that the claimant is not recovering like he would expect someone with just an isolated MCL and notes that physical therapy, in his opinion, would be counter productive. Dr. Lochemes ordered an MRI and continued the claimant on his restrictions as well as medications. The MRI of the claimant's right knee was made on March 14, 2003, and revealed that the claimant had a medial collateral ligament sprain, anterior cruciate ligament sprain-mild, no definite meniscal tear, a small Bakers' cyst and a bone bruise on the posterior aspect of his lateral femoral condyle. Dr. Lochemes writes on March 17, 2003, that he has reviewed the claimant's MRI result and recommended that the claimant restart physical therapy, continue to wear his brace and advised him to restrict his activities. On March 27, 2003, Dr. Lochemes writes that the claimant has declined an injection and complains about the pain in his knee. The doctor writes that the claimant wants an arthroscopic evaluation and notes that, in his

opinion, it is going to be a "poor yield." The doctor writes that, in his opinion, the claimant's problem is basically in the soft tissue in the joint and a shot actually could help. The doctor recommended Lidoderm patches, to continued physical therapy and to continue his restrictions. Dr. Lochemes last saw the claimant on April 10, 2003, noting that the Lidoderm did not help at all and the claimant refused a diagnostic injection and refuses physical therapy at this point. Dr. Lochemes notes that he thinks the claimant's symptoms will improve if he continues to work on his range of motion. The doctor writes that the claimant reports swelling the day before but that he, Dr. Lochemes, did not find any swelling. The doctor writes that based on the MRI and the intra-articular pathology, he does not think there is enough evidence to justify scoping the claimant's knee. Dr. Lochemes released the claimant to full duty to be seen back as needed. The claimant was given restrictions of ten pounds continuous lifting, twenty-five pounds intermittent lifting and should not climb, knee, bend or stoop. The claimant was released to regular duty.

The claimant was seen by Dr. James C. Varner on June 10, 2003. Dr. Varner took a clinical history of the claimant's injury as well as his past medical treatment for his injury, specifically setting out the findings on the claimant's MRI. Dr. Varner performed an evaluation and examination of the claimant's right lower extremity and diagnosed the claimant with having remote capsular strain of his right knee. Dr. Varner writes that based on his examination and with the absence of effusion and without evidence of meniscal

pathology on the claimant's MRI evaluation, it is difficult to recommend arthroscopic evaluation due to the potential risks. Dr. Varner released the claimant to resume regular duty work.

The claimant was seen by Dr. Randall Frazier on September 5, 2003, with complaints to his right knee. Again the claimant's medical history was reviewed and it is noted that the claimant complains of giving way, catching, locking and swelling when he is up and about for any length of time. Upon examination, Dr. Frazier notes that the claimant walks with a normal gait and his knee has no soft tissue swelling and no effusion. Dr. Frazier writes that the claimant does complain of some pain over the posteromedial and medial joint space. The doctor writes that the McMurray's examination caused the claimant pain but that he could not elicit any specific palpable click and there was no tenderness laterally. The doctor writes that the claimant has no instability to varus/valgus anterior/posterior drawer and he is very apprehensive with motion and attempted testing. The doctor notes that he did not feel any kind of pivotal shift or laxity and there is certainly no instability to valgus stress. Dr. Frazier recommended that the claimant have his knee scoped, noting that he has failed all other conservative measures and sees no other option than a scope.

After a complete review of this record, I find that the claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment for his right knee strain. Two of the claimant's treating physicians have released the claimant to return to work at regular duty with no

recommended medical treatment suggested. Dr. Frazier in his examination of the claimant does not note any medical findings except for the claimant's subjective complaints of pain. Dr. Frazier's recommended scope of the claimant's knee indicates that without any other physical findings as well as the failure of conservative measures to treat the claimant's complaints of pain, he sees no other option but to scope the claimant's knee. It is noted that both Dr. Lochemes and Dr. Varner agree after examination of the claimant that a scope of the claimant's knee would not be productive.

I further find, based on the record, that the claimant is not entitled to additional temporary total disability from April 17, 2003, to a date to be determined. The claimant himself has testified that the respondent offered him a job after he was released to full duty by his treating physician and he refused to even try the job offered. There is no indication in this record that any physician has taken this claimant off work as a result of his knee strain.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On February 17, 2003, the relationship of employee-employer-carrier existed between the parties.

3. On February 17, 2003, the claimant sustained a compensable injury to the right knee

4. Medical services have been paid to June 10, 2003.

5. Temporary total disability benefits have been paid to April 17, 2003.

6. The claimant has failed to prove his entitlement to additional medical treatment for his right knee strain. See discussion above.

7. The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability from April 17, 2003, to a date to be determined. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional temporary total disability and additional medical treatment for his right knee strain. Therefore, this request for additional benefits should be denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE