

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311793

LISA M. GOSS, EMPLOYEE	CLAIMANT
FAMILY DOLLAR STORES, INC., EMPLOYER	RESPONDENT
TRAVELERS INSURANCE, CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 21, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on September 10, 2004 at Monticello, Drew County, Arkansas.

Claimant represented by the HONORABLE STEPHEN TISDALE, Attorney at Law, Eudora, Arkansas.

Respondents represented by the HONORABLE MARK A. PEOPLES, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant sustained a compensable injury as defined by Ark. Code Ann. §11-9-102.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on September 16, 2003 at which time the claimant was earning sufficient wages to entitle her to a compensation rate of \$150.00, in the event this claim is found to be compensable.

The claimant contends she injured her left knee in a twisting incident while stocking shelves. She seeks payment of medical expenses, temporary total disability benefits from September 17, 2003 to October 23, 2003 and attorney's fees.

The respondents contend the claimant did not suffer a compensable injury arising out of and in the course of her employment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the hearing transcript.

The claimant and her mother, Peggy Johnson, whose testimony was corroborative, were the only witnesses to testify at the hearing. The ladies appeared to be credible.

The claimant, age 30 (D.O.B. April 5, 1974) has a G.E.D. and work experience as a receptionist and retail clerk. She began work for the respondent-employer in July 2003 as a store clerk and cashier. Her job duties also included unloading delivery trucks and stocking the shelves. In October, 2003 she began working for a company owned by relatives, eviscerating catfish for \$7.00 per hour and she remains employed there.

On Thursday September 16, 2003, the claimant hurt her left knee while stocking shelves. She walked to the end of an aisle to retrieve more merchandise expecting to find a buggy. However, the buggy had been moved and the claimant's sharp turn twisted her knee.

The claimant experienced immediate pain and reported the incident to her store manager who brought her a stool so she could sit. Her district manager brought her some Tylenol and water. She was told she could work sitting down, but the pain persisted and the claimant asked for medical attention.

The claimant was examined on September 16, 2003, prescribed medication and crutches, and excused from work. She returned to the clinic for an MRI scan and was diagnosed with a medial meniscal tear and arthroscopic surgery was recommended. The workers compensation carrier controverted the claim and the claimant has not had the financial resources to pursue medical treatment.

On October 20, 2003, the claimant returned to the respondent-employer but was told no light duty was available. She then began work for her relatives' catfish company and they allow her to sit while she works.

The claimant testified her left knee remains painful with a popping sensation. She explained that the discomfort was worse on cold or rainy days.

As a teenager, the claimant was athletic, enjoying softball, Karate, and cheerleading. She has had no prior knee injuries.

On cross-examination, counsel suggested this injury occurred after the claimant moved her residence. No direct testimony was presented on this matter and the claimant and her mother indicated the move was about a month prior to the incident at work.

MEDICAL EVIDENCE

The claimant was initially treated by general practitioners at Lake Village Clinic before seeing orthopaedic surgeon, Dr. Gregg Gober.

Clinic Note 9-16-03:

She injured her leg today at work about 12:00 noon. She is not really sure how she did it. She was turning a corner and suddenly experienced discomfort in the left knee area which has persisted. She did not fall or strike her knee. She did not hear a pop, but she has had trouble with weight bearing on the knee since then.

The physical exam was negative, except for swelling of the thigh and lower leg. X-rays and a venous Doppler test were negative. The doctor took her off work, prescribed medication and limited weight bearing on her leg. The pain persisted and the claimant was given a knee immobilizer and crutches on September 19, 2003. On September 24, 2004 an MRI scan confirmed, “increased signal intensity in the posterior horn of the medial meniscus, extending to the inferior articular surface, suggestive of a meniscal tear.”

The claimant saw Dr. Gober on October 9, 2003. He examined her knee, reviewed the x-rays and MRI scan and recommended arthroscopy. He excused her from work until October 21, 2003 with “sedentary restrictions for 2 weeks.”

The claimant returned to see Dr. Gober on April 1, 2004:

I initially saw Ms. Goss on October 9, 2003 due to pain in her left knee. She reported at that time that she had sustained a twisting injury at her work on September 16, 2003. She was complaining of pain with physical activity.

Her initial examination was consistent with a medial meniscal tear. She did have an MRI which showed abnormal signal in the posterior horn of the medial meniscus as well as a bone contusion to the medial tibial plateau. Due to her symptoms at that time, I have

recommended arthroscopic evaluation of the knee. Apparently her claim was not approved by her workman's comp carrier, and she did not proceed with the surgery. At present she complains of pain essentially on an everyday basis. She has complained of "popping" in the knee as well. She denies any locking or catching. There is an occasional effusion. Her pain is worse with physical activity.

She has had a previous MRI which showed findings consistent with a posterior horn medial meniscal tear. My recommendation for her would be arthroscopic evaluation of the knee as previously recommended. I do not feel Lisa's problem is going to improve in that she is essentially having the same symptoms that she had when I saw her back in October of 2003. It is my opinion that her symptoms are consistent with the history that she outlined initially.

FINDINGS AND CONCLUSIONS

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993, which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. Under Act 7696 of 1993, the claimant has the burden of meeting the elements of proof by a preponderance of the credible evidence of record, which means "evidence of greater convincing force," Smith v. magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 442 (1947):

- 1) proof that the injury arose out of and in the course of employment
- 2) proof that the injury caused internal or external physical harm to the body which required medical services or resulted in disability
- 3) proof establishing the injury by objective medical evidence
- 4)(a) proof that the injury was caused by a specific incident identifiable by time and place of occurrence

or

- (b) proof that the injury was caused by rapid, repetitive motion and proof that the injury was the major cause of disability or need for medical treatment.

Failure to prove any one of these elements defeats the claim.

The respondents' only defense to this claim is that the injury did not arise out of and in the course of her employment.

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

The test for the course of employment requires that the injury occur within the time and space boundaries of the employment, while the employee is carrying out the employer’s purpose or advancing the employer’s interests. Pilgrims Pride Corp. v. Calderera, 54 Ark. App. 92, 923 S.W.2d 290 (1996).

The claimant has no preexisting knee condition that would make this an “idiopathic” injury and “unexplained” injuries are generally held to be compensable. Little Rock Convention & Vistors Bureau v. Pack, 60 Ark. App. 82, 959 S.W.2d 415 (1997), and Moore v. Darling Store Fixtures, 22 Ark. App. 21, 732 S.W.2d 496 (1987).

In summary, the evidence shows that the claimant was engaged in the performance of her job duties at the time her injury occurred. The causal connection exists because she was walking to retrieve merchandise for stocking on the shelves when she turned and twisted her knee. Therefore, I find that a preponderance of the evidence of record establishes that the claimant’s knee injury was a natural and probable consequence of her employment services. Mize v. UAMS, Full Commission opinion of May 17, 2001 (E804727).

1. The Workers’ Compensation Commission has jurisdiction of this claim in which the employer-employee-carrier relationship existed on September 16, 2003 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$150.00.
2. The claimant has proven by a preponderance of the credible evidence that she sustained a compensable injury, caused by a specific incident, arising out of and

in the course of her employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

3. The respondents are directed to pay all medical expenses within thirty days of receipt pursuant to Commission Rule 30.
4. The claimant is entitled to temporary total disability benefits from September 17, 2003 to October 23, 2003 as she remained in her healing period and was not working. She will be entitled to a second period of temporary total disability once the surgery is performed.
5. This claim has been controverted and claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with Ark. Code Ann. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990)(D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge