

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F311795

DONNIE GREEN,
EMPLOYEE

CLAIMANT

COGSWELL MOTORS, INC.,
EMPLOYER

RESPONDENT

CENTRAL ARK AUTO DEALERS SIF,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 19, 2004

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Russellville, Pope County, Arkansas.

The claimant was represented by HONORABLE LAURA J. MCKINNON, Attorney at Law, Fayetteville, Arkansas.

The respondent was represented by HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on July 14, 2004 in Russellville, Arkansas. A prehearing order was entered in this case on March 10, 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 and are hereby accepted:

1. The employee-employer relationship existed in October 2002 and at all relevant times.

2. This case has been controverted in its entirety.

3. The claimant earned an average weekly wage of \$547.28 which would yield a TTD rate of \$365.00, if the claim is found to be compensable.

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

1. Compensability of allegedly work-related knee condition or injury caused by a specific incident.

2. Reasonable and necessary medical benefits.

3. The claimant's entitlement to TTD benefits from 10/16/02 - 11/25/03.

4. Extent of permanency, including but not limited to the claimant's assigned rating by Dr. Hoghiran of 23% PPI, LE.

5. Controversion.

6. The claimant's entitlement to additional benefits pursuant to A.C.A. 11-9-505(a)(1) and Needham v. Harvest Foods, 64 Ark. App. 141, 987 S.W.2d 278 (1998).

7. Notice.

The record consists of the July 14, 2004 hearing transcript and the exhibits contained therein.

DISCUSSION

To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time or place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope 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) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the claimant changed his contentions during the course of the hearing held on July 14, 2004. The claimant now contends that he slipped and injured his knee while exiting a truck on a wet floor at work on Friday, October 25, 2002, rather than on October 16, 2002 as previously alleged. The claimant testified that he reported the incident and injury to Mr. Ahrens, and that he thereafter went home early because of his knee on October 25, 2002. Mr. Ahrens testified that he received no such

report, and Mr. Slater, Mr. Osburn, and Mr. Ahrens all testified that they recall the claimant leaving that day early reporting that he had symptoms of the flu.

Medical reports from October 27, 2002 and October 29, 2002 do reference a fall at work which reportedly occurred some days before. However, an insurance claim form filled out on October 31, 2002 indicates that the fall occurred on October 26, 2002, that the accident occurred when the claimant stepped out of a truck in a driveway injuring his leg, and that he was not at work at the time of the accident.

After hearing the live testimony and observing the demeanor of the witnesses, and after also considering all of the documentary evidence submitted by both parties, I find that the claimant has failed to meet his burden of proof by establishing by a preponderance of the conflicting evidence that he sustained his knee injury at issue at work. I therefore find that the claimant has failed to establish by a preponderance of the credible evidence that his knee injury arose out of and during the course of his employment. In light of this finding, I find that all other issues in this case are moot.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The employee-employer relationship existed in October 2002 and at all relevant times.

2. This case has been controverted in its entirety.

3. The claimant earned an average weekly wage of \$547.28 which would yield a TTD rate of \$365.00, if the claim is found to be compensable.

4. The claimant has failed to meet his burden of proof of establishing by a preponderance of the evidence that his knee injury at issue occurred at work.

5. The claimant has therefore failed to meet his burden of proof of establishing by a preponderance of the credible evidence that his knee injury at issue arose out of and in the course of employment.

6. Because the claimant has failed to establish by a preponderance of the credible evidence that he sustained a compensable injury, all other issues in this case are moot.

ORDER

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge