

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208445 & F200267

FREEMAN E. GREEN, EMPLOYEE	CLAIMANT
COOPER STANDARD AUTOMOTIVE, INC., EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 1, 2004

Hearing conducted before Administrative Law Judge C. MICHAEL WHITE in Hope, Hempstead County, Arkansas.

The claimant was represented by KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by NORWOOD PHILLIPS, Attorney at Law, El Dorado, Union, Arkansas.

OPINION AND ORDER

A hearing was held in this matter on January 13, 2004. A prehearing conference was conducted on November 4, 2003, and a prehearing order was filed on November 12, 2003. A copy of the prehearing order has been marked as Commission Exhibit No. 1 and made a part of the record without objection.

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

1. The employer/employee/carrier relationship existed on December 8, 2001, and June 24, 2002.
2. The claimant sustained compensable injuries on December 8, 2001, and June 24, 2002.
3. The parties shall be prepared to stipulate to a compensation rate

by the time of the hearing scheduled in this matter.

During the prehearing conference, the parties also agreed that the issues to be litigated at the hearing were limited to the following:

1. Whether additional medical treatment is reasonably necessary for the treatment of the claimant's compensable injuries.
2. Whether the claimant is entitled to additional temporary disability compensation.

From a review of the record as a whole, to include the testimony of the claimant, as well as the medical records and other documentary evidence, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. The respondents controverted this claim in its entirety.
4. I find that the claimant failed to prove by the preponderance of the evidence that he is entitled to any additional temporary disability compensation.
5. The respondents controverted the claimant's entitlement to any additional temporary total disability compensation.

DISCUSSION

Claimant began working for the respondent-employer in 1992 as a production worker. Previously the claimant had spent four years playing college basketball for Ouachita Baptist University. Then he spent one year playing professional basketball in Ankara, Turkey. According to the claimant's testimony he never suffered any injuries to any part of his body while playing basketball. In 1999 the claimant sustained a compensable injury to his right knee. He came under the care of Dr. James Mulhollan, an orthopedic surgeon. Dr. Mulhollan ultimately performed surgery to repair ligament damage in that knee. The claimant returned to work for the respondent employer when he was released by Dr. Mulhollan and again performing the same job. The claimant sustained a second work-related injury in December of 2001, and he came under the treatment of Dr. D'Orsay D. Bryant, III, an orthopedic surgeon, who had also treated the claimant after his first injury. Dr. Bryant initially treated the claimant conservatively. However, when the claimant continued to complain of problems, Dr. Bryant surgically repaired a meniscal tear in January of 2002. After being off work for a brief period of time, the claimant returned to work for the respondent-employer at the same job. The claimant sustained another injury on June 23, 2002, to his right knee when he slipped on an oily spot while stepping down from his press. He

twisted his knee as a result of this incident. The respondent-employer again accepted this injury as compensable. The claimant once again came under the care of Dr. Bryant. An MRI performed on July 8, 2002, revealed a horizontal tear of the medial meniscus. On July 17, 2002, Dr. Bryant performed an arthroscopic medial meniscectomy. The claimant again returned to work. However, he ultimately began to complain of bilateral knee pain and on November 19, 2002 he returned to Dr. Bryant. Dr. Bryant opined at that time that the claimant had "what can be determined as 'athlete's knee' with long standing cartilage damage for many years duration." Dr. Bryant also advised the claimant that he could anticipate difficulty in performing his manual labor job activities in the future because of this pre-existing condition in his knees.

Claimant was again examined by Dr. James Mulhollan on December 23, 2002. Dr. Mulhollan opined that although the claimant's prior problem had been work-related, due to the history of trauma associated with those problems, that the claimant's current complaints are a progression of his underlying pre-existing condition. Dr. Mulhollan has opined that the claimant will ultimately require a total knee replacement. However, again Dr. Mulhollan has opined that the total knee replacement is not related to claimant's employment. Dr. Mulhollan has referred the claimant to Dr. Scott Bowen, also

an orthopedic surgeon. Dr. Bowen has diagnosed an arthritic condition. With regard to the relationship of the claimant's condition to his employment, Dr.

Bowen provided the following opinion:

I believe that his arthritic condition is a continuation of his previous workers' compensation related injuries from which he received care under Dr. Dorsey (sic) Bryant and Dr. Mulhollan. I want to make this clear that this is not a new injury but just a progression of his arthritic condition through his previous medial menisectomies and injuries related to his work.

In deposition testimony Dr. Bowen indicated that the claimant's current condition is a combination of many factors which resulted in the degeneration of his knees, including, but not limited to, his employment.

At the hearing conducted in this matter the claimant contended that the surgery recommended by Dr. Bowen was reasonably necessary for treatment of his compensable injuries and that he was entitled to this surgery at the expense of the respondents. However, subsequent to the hearing the Commission was advised through counsel for the claimant that the claimant was withdrawing this issue. Consequently, the only issue remaining is whether the claimant is entitled to temporary total disability compensation.

Temporary disability is determined by the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. An injured employee is entitled to temporary total disability compensation

during the period of time that he is within his healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). An injured employee is entitled to temporary partial disability compensation during the period that he is within his healing period and suffers only a decrease in his capacity to earn the wages that he was receiving at the time of the injury. Id. The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102(6) (Cumm. Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of his injury will permit. When the underlying condition causing the disability becomes stable and when nothing further will improve that condition, the healing period has ended, and the claimant is no longer entitled to receive temporary total disability compensation or temporary partial disability compensation, regardless of his physical capabilities. In the present claim the respondents paid temporary total disability compensation to the claimant from the time that he stopped working in December of 2002 through April 27, 2003. The claimant contends that he is entitled to temporary total disability compensation extending from that period of time. However, I find that the claimant failed to prove by the preponderance of the evidence that he is entitled to any

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additional temporary disability compensation. Specifically, I find that the claimant failed to prove by a preponderance of the evidence that he remains in his healing period. A preponderance of the evidence establishes that the claimant suffers from a pre-existing condition which has been exacerbated and accelerated by his employment. Furthermore, the medical records indicated that other than the surgeries which the claimant has elected not to receive, there is no further medical treatment which can be provided to the claimant which can be expected to improve his condition. Consequently, I find that the claimant failed to prove by a preponderance of the evidence that he is entitled to any additional temporary disability compensation.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that this claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. C. MICHAEL WHITE
ADMINISTRATIVE LAW JUDGE