

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F312934**

<b>ROGER D. WEDELL, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>SKYLIGHT SIGN &amp; NEON, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>TRAVELERS INSURANCE COMPANY, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 20, 2004**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on April 28, 2004 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, 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 and temporary partial disability, anatomical impairment, 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 does not preponderate in favor of the claimant and benefits must be denied.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on December 5, 2003 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of

\$408.00, in the event this claim is found to be compensable.

The claimant contends he injured his left knee in a specific incident stepping out of his truck on December 5, 2003. His employer's wife took him to the emergency room at St. Vincent's. The claimant came under the care of Dr. Ralph Cash who performed surgery on December 11, 2003. The claimant seeks payment of medical expenses, temporary partial disability benefits from December 8, 2003 to December 18, 2003 and temporary total disability benefits from December 19, 2003 to January 28, 2004, a 2% anatomical impairment rating and attorney's fees.

The respondents contend the claimant did not sustain an injury in the course and scope of his employment.

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

The following witnesses testified at the hearing: the claimant, who was loquacious and dramatic in his testimony; co-worker, Roger Reynolds; owner Mike Coldiron and his wife Fronda; and the owner's step-brother, Clyde Spann.

The claimant, age 45 (D.O.B. November 29, 1958), testified he has twenty-five years of experience in the signage business. He moved to Arkansas from Michigan and began working for the respondent-employer on January 28, 2004. Because of excessive traffic violations, the claimant's driver's license was suspended in Michigan and he has never gotten an Arkansas license. He was not allowed to drive the company trucks.

On December 5, 2003 the claimant was riding as a passenger in the company truck driven by co-worker, Roger Reynolds. The truck they regularly used was in the shop for repairs but this truck had no instep on the fuel tank making it harder to enter and exit the truck. The claimant

testified the crew gathered in the parking lot of a restaurant “to get the vehicles together,” (Tr. p. 16-17).

The employees met their boss, Mike Coldiron, at a restaurant for lunch. When the claimant stepped out of the truck he heard a pop and his knee felt hot. The first few steps across the parking lot were not too bad but by the time he got to the door of the restaurant, his knee was hurting and he couldn't put any pressure on it.

Roger Reynolds testified he worked with the claimant about six months and never noticed any knee problems before December 5. The claimant didn't mention his knee was hurting until after they had been sitting at the table for a few minutes. The owner, Mike Coldiron, often buys the crew lunch.

Clyde Spann stated he met up with the claimant and Mr. Reynolds because they planned to help him on a job that afternoon. Mr. Coldiron joined them for lunch later as he was running late. Clyde Spann testified he didn't notice the claimant limping that day and they had been at the restaurant 10-15 minutes before the claimant started complaining about his knee. He said his knee had gone out on him before and it just needed to be set back in place. He said he thought he might have hurt it when he stepped out of the truck. The crew finished lunch and Mr. Spann drove the claimant to the next job site where Fronda Coldiron picked him up and took him to the ER.

Mike Coldiron testified the claimant told him he thought he hurt his knee earlier when he bent down to play with a dog. He said this had happened before and the knee would pop back into place. Mr. Coldiron usually bought lunch for his employees four times per week. The claimant worked one week after surgery.

Frona Coldiron, the owner's wife, took the claimant to the ER and the claimant paid for the

visit with his group health insurance. After treatment, the claimant asked to be taken back to the business where he picked up his car and drove himself home.

### MEDICAL EVIDENCE

The claimant was treated at the Emergency Room (ER) on Friday December 5, 2003, with the following history:

stepped out of truck  
heard & felt a pop  
Now c/o pain to bear  
Wt. L Knee

In another report there is a reference to an “episode” but I am unable to read the handwriting. He was released with instructions not to bear weight on his leg until he spoke with an orthopedic surgeon on Monday, December 8, 2003.

The claimant was examined by Dr. Ralph Cash who diagnosed edema, a meniscal tear and degenerative changes after an MRI scan. Dr. Cash took the following history:

Dr. Cash’s Report of December 8, 2003:

Mr. Wedell is a 45-year-old male complaining of pain and swelling of the left knee. Actually he noticed this a couple of weeks ago. He just squatted and turned and felt something catch and then release in his knee.

Again today he was doing a lot of twisting and turning and he stepped out of his truck and felt again his knee had some pain and tried to give away, but it is swollen up.

Surgery was performed on December 11, 2003 and the claimant was excused from work from 4-6 weeks. The claimant was advised to perform exercises and use crutches. On February 20, 2004, Dr. Cash rated the claimant’s permanent impairment at 2% based on the 4<sup>th</sup> Ed. of the AMA Guidelines at p. 85.

Dr. Cash's records clearly demonstrate the claimant had a preexisting condition with his knee.

### 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. The claimant has the burden of proving the following requirements, as defined by Ark. Code Ann. §11-9-102, by a preponderance of the evidence of record, which means "evidence of greater convincing force," *Smith v. Magnet Cove Barium Corporation*, 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.

In order to be compensable under Ark. Code Ann. §11-9-102, and injury must occur at a time when employment services are being performed. The claimant must prove that the injury occurred

within the time and space boundaries of the employment, when the employee is advancing the employer's purpose or interests directly or indirectly. Olsten Kimberly Quality Care v. Pettey, 328 Ark. 381, 944 S.W.2d 524 (1997).

Even if the claimant is supplied a company vehicle and travel is inherently necessary for the job, the claimant must still demonstrate that employment services were being performed at the time of the injury, Kinnebrew v. Little John's Trucks, Inc., 66 Ark. App. 90, 989 S.W.2d 541 (1999), in order to prove a compensable injury.

As I understand the lay testimony, meeting the boss for lunch was not mandatory and did not happen every day. The lunch destination was chosen as a matter of convenience, close to the area where they were working and the crew was contacted by cell phone (Tr. p. 23, 37-38, 41-42, 50, 59).

I could understand the crew meeting at their place of business at noon to park and leave a truck that wasn't needed for the afternoon job, but on the day in question, they did not leave any trucks at the restaurant and Mr. Spann and Mr. Coldiron specifically testified all the trucks traveled to the next job site (Tr. p. 46, 50).

Therefore, I find this lunch meeting was purely a voluntary matter and no employment services were being performed at the time the claimant left the truck and walked across the parking lot to the restaurant.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on December 5, 2003, at which time the claimant was earning sufficient wages to entitle him to a compensation rate of \$408.00.
2. The claimant has failed to prove by a preponderance of the credible evidence that he sustained a

compensable injury, caused by a specific incident, arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, requiring medical treatment or producing disability, pursuant to Ark. Code Ann. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

---

ELIZABETH W. HOGAN  
Administrative Law Judge