

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F308399

**MICHAEL D. BLACKBURN,
EMPLOYEE**

CLAIMANT

**RYAN'S FAMILY
STEAK HOUSES, INC.,
EMPLOYER**

RESPONDENT

**ZURICH AMERICAN INS. CO.
& CRAWFORD & COMPANY,
INSURANCE CARRIERS**

RESPONDENTS

OPINION FILED APRIL 12, 2005,

Pursuant to a Hearing conducted January 13, 2005, before Administrative Law Judge Richard B. Calaway in Hot Springs, Garland County, Arkansas, with

Ms. Shannon Muse Carroll, Attorney at Law, Hot Springs, Arkansas, appearing for the claimant, and

Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the compensability of a knee injury the claimant attributes to a fall during his employment as a waiter with Ryan's Family Steak Houses, Inc., but which the respondents contend pre-existed the employment.

The claimant contended that on July 25, 2003, he suffered a compensable injury to his left knee when he slipped and twisted his knee on his way to the employer's kitchen. He requested benefits for reasonably necessary medical and related expenses and temporary total disability benefits from the date of injury until September 1, 2004, when he returned to the workforce, as well as an attorney's fee for controversion. The claimant's previous motion for a continuance was withdrawn at the outset of the hearing. Other possible issues were reserved.

The respondents contended that the claimant suffered from pre-existing knee problems and did not injure his knee at work, and that a compensable injury cannot be established by medical evidence, supported by objective findings, as required by the Act. They also contended that the medical evidence fails to support either the occurrence of a recurrence, aggravation, or new injury, or entitlement to temporary total disability benefits.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including July 25, 2003, when the claimant's average weekly wage was \$176.01.

3. The preponderance of the evidence shows that the claimant suffered a compensable injury to his left knee on or about July 25, 2003, and has incurred reasonably necessary medical and related expenses which are the responsibility of the respondents.

4. As a result of his compensable injury, the claimant was temporarily totally disabled from the date of injury until September 1, 2004, when he returned to the workforce, within the meaning of Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146 (2001).

5. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

DISCUSSION

The claimant, 21 years of age at the time of the hearing, testified that he had worked as a server for Ryan's Family Steak Houses for about one month when on July 25, 2003, while walking to the kitchen he "slipped on something on the floor" and injured his left knee. The bottom half of his leg "twisted over on" him and he caught himself on a support pole so that he did not fall all the way to the floor. No one saw him fall although someone the claimant did not know came up behind him and helped him to his feet. The claimant thought he might just have strained his knee and tried to "walk it out" but the pain got worse and he had to walk with his knee locked, with a straight leg, that caused him to limp. Two co-workers, Shontaya Reid and Debbie Coels noticed that the claimant was injured and discussed it with him. The claimant also went to David Griffith, the night manager on duty, and told him his leg was hurt and he was in a lot of pain. The manager asked if he could finish his shift which he did.

Co-workers Shontaya Reid and Debbie Coles both noticed that the claimant was injured and were told by the claimant that he had twisted his knee. Coles indicated that the claimant told her that it was an old service injury. She allowed the claimant to borrow a knee brace that she herself had previously used. The injury occurred toward the end of the shift, around 10:30 p.m.

The claimant went to the emergency room early the next morning and then went with his mother to discuss the situation with Brian Speck, the manager at the restaurant. He directed the claimant to return to the doctor to get drug tested. A written statement from Griffith, the Friday night manager, indicated that the claimant had reported that his knee was sore and swollen but not that it was injured at work.

The claimant had prior incidents of injury, not all of which relate to his knee condition. For example, in May, 2000, he had a slip and fall injury and later in July 2002, he was involved in a motor vehicle accident. However, in 2001, the claimant had injured his knee during boot camp. An MRI report dated May 2, 2001, indicated a small amount of fluid was present within the left knee joint but that the knee was otherwise unremarkable. Witnesses for the respondents testified that the claimant had previously stated that his knee bothered him from time to time. However, there is no medical record showing that these periodic problems were serious enough for him to seek medical care.

When the record as a whole is considered, the preponderance of the evidence tends to show that the claimant suffered a compensable injury to his knee on or about July 25, 2003. The testimony of the co-workers, the claimant's report of his knee problem to the night manager and, the next day to Brian Speck, as well as his need for medical care, tend to show that he injured his knee at work as alleged. The medical record also shows on July 31, 2003, five days after the fall at work, the claimant's knee problem caused him to seek medical care and the attending nurse indicated that she observed minimal edema, a sufficient objective finding for purposes of the Act.

As to temporary total disability benefits, Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146 (2001) provides that, in the case of a scheduled injury, the worker is to receive compensation for temporary total disability during the healing period or until he returns to work, whichever occurs first. Here, when first seen on July 26 by Dr. Wagenhauser, the final diagnosis was acute left knee sprain - rule out internal derangement, for which the claimant was told to limit weight bearing for one week, use ice and elevate and take Vicodin and Advil. When he returned later on July 26, he was in a knee immobilizer and on crutches. After a second examination and a

drug screen, the claimant was advised to continue with the earlier medical recommendations, follow up with orthopedics next week, and follow up with Dr. Atta for the remainder of the workers' compensation evaluation. The impression then was acute left knee pain. When he was seen on July 31, Percocet was also prescribed and the impression was left knee pain, likely medial collateral ligament strain. The plan included using a splint was ambulating with crutches but that the splint could be taken off when sitting and the claimant was instructed to move his toes and legs. When the claimant was seen October 2, 2003, at Orthopedics Associates, an MRI was scheduled but not performed. The assessment was profound left knee pain, medial meniscal tear likely. The physical examination indicated that the claimant had quite profoundly atrophic quadriceps consistent with wearing a knee immobilizer for quite some time, as well as significant atrophy of his hamstrings and his quads, as well as somewhat of his calves, likely secondary to disuse. There is no medical record thereafter and it was reported that the claimant returned to work September 1, 2004. Nothing in the record contradicts his claim that he continued in his healing period thereafter. Accordingly, he is entitled to temporary total disability benefits, as requested.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge