

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F411324

**MICHAEL E. BROWN,
EMPLOYEE**

CLAIMANT

**WINFIELD CABINETS SHOP,
EMPLOYER**

RESPONDENT

**COMMERCE & INDUSTRY
INSURANCE CO.;
AIG CLAIMS SERVICE,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED NOVEMBER 18, 2005,

Pursuant to a hearing conducted August 31, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Terrence C. Jensen, Attorney at Law, Benton, 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 claimant's request for additional medical care for any condition that was original accepted as compensable by the respondents but is now controverted in its entirety.

The claimant contended that on August 24, 2004, he sustained a compensable injury to his left knee for which he has received benefits and that he should be awarded additional medical treatment at the expense of the respondents, as well as an attorney's fee for controversion of the claim. Other possible issues were reserved.

The respondents contended that although they originally accepted the injury as compensable and voluntarily paid medical and indemnity benefits including benefits for permanent impairment of 7% to the lower extremity, they now take the position that the injury did not occur and the claimant's need, if any, for continuing medical care is associated with pre-existing problems and not

warranted by the alleged event at work. Previously, during the prehearing conference, the respondents had contended that the claimant had been released to return to full duty work and has reached maximum medical improvement and any need for medical care is the result of pre-existing congenital conditions or an independent intervening cause, but not the compensable injury.

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 August 24, 2004; the claimant's average weekly wage was \$400.00; he has received an impairment rating of 7% to the body as a whole which has been paid by the respondents.

3. The preponderance of the evidence fails to show that the claimant sustained a compensable injury arising out of and in the course of his employment on or about August 24, 2004.

DISCUSSION

The claimant testified that he went to work for the respondent employer around April, 2004, and suffered an injury to his left knee either on August 24, 2004, or the Friday before the Labor Day weekend, which would have been September 3, 2004.

He testified that while delivering cabinets to a project at the First Baptist Church, he and other co-employees were carrying a cabinet that weighed over 400 pounds and that he was holding one end and backing up. He stated that as he backed up, his right leg caught on some carpet that had

been pulled back and he stumbled and planted his left leg in such a manner that he would not fall. He testified that he heard his knee pop and felt a tear and one of the other guys, who was not real good with lifting, asked him if he had been hurt. The claimant testified that he figured he would walk it out and work it out and he did his job until it started really bothering him and he had to get something done. At that point, he sought medical care at the emergency room of Southwest Regional Medical Center. The record from that visit on September 6, 2004, shows that the claimant was complaining of pain to the left knee, secondary to twisting it two to three weeks ago. The claimant also testified that he told Roger Winfield that he hurt his knee the date the incident happened and, later, after he had returned from Southwest Regional Medical Center, he told Roger what had happened and that he had been given a knee brace. An MRI scan dated September 21, 2004, showed a horizontal tear of the posterior horn of the medial meniscus, as well as amorphous appearing tear involving the junction between the anterior horn and body of the medial meniscus.

The respondents afforded the claimant medical care, including arthroscopic surgery on October 18, 2004, by Dr. Scott Bowen. At the time of the hearing, Dr. Bowen had declined to treat the claimant further and the parties agreed that Dr. Dennis Luter was an authorized treating physician.

Witnesses for the respondents offered testimony which contradicted the claimant's testimony. For example, Roger Winfield testified that the cabinets were delivered to the church on August 13 and August 16, 2004, but not the dates alleged by the claimant. He also testified that the claimant did not report the alleged injury to him on the date that it supposedly happened. He also stated that he had seen the claimant on a daily basis prior to his visit to the emergency room and the claimant showed no sign of injury and did not complain of injury. He also testified that there were three

other jobs where cabinets were installed after August 13 and the claimant had no problem with any of them. He further testified that large cabinets were unloaded from a truck and put onto a low cart and pushed in, but not carried in, as described by the claimant. He also testified that he remembered “very well” that the claimant did not say anything to him about being injured on the alleged day of the event.

Harold Kerrick Tipton, a co-worker, testified that he was present at the Baptist Church job and did not remember the claimant stumbling and did not remember asking the claimant if he was hurt, contrary to the claimant’s testimony. He also testified that any heavy cabinet was moved with a dolly and not carried in by hand. He testified that the accident described by the claimant did not happen.

Randy Neal, another co-worker, similarly testified that he was present at the Baptist Church job and did not remember the claimant stumbling, or commenting about injuring his knee. He did remember that the claimant came in after the Labor Day weekend with a knee brace and said he had hurt his knee at the First Baptist Church. However, he also testified that on the Friday before the Labor Day weekend the claimant did not appear to be having any physical problem and told him that he was going to work at the Church that weekend doing paneling or something, and he was surprised when the claimant returned to work injured the following week. He, too, confirmed that a dolly or cart was used when a heavy cabinet was moved.

In short, several witnesses gave credible testimony that contradicted the claimant’s account of his injury and indicated that he intended to work at the Baptist Church over the Labor Day weekend, after which he claimed that he had suffered a knee injury at the Church, but attributed it to his previous employment activity there.

At the beginning of the hearing, a discussion among the attorneys revealed that the stipulations originally agreed to were not acceptable and the respondents intended to controvert the claim. It was also discussed that claimant's counsel would expect an appropriate attorney's fee for controversion of the claim. After the claimant had rested and the respondents had presented the direct testimony of two witnesses, claimant's counsel objected to addressing the issue of compensability. This objection was overruled as untimely under the circumstances.

The hearing also addressed the issue of the claimant's failure to appear at a deposition which caused the respondents to incur a court reporter bill of \$50.00. It was ruled at the hearing that the respondents could take a \$50.00 credit against any benefit that might be payable to the claimant in the future, such as indemnity or mileage, but not against medical expense.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge