

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403016

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| TONY CHAVEZ | CLAIMANT |
| PEPPER SOURCE LTD | RESPONDENT |
| TRANSPORTATION INS. CO. INSURANCE CARRIER | RESPONDENT |

OPINION FILED MARCH 7, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by KENNETH OSBORNE, Attorney, Fayetteville, Arkansas.

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on December 7, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on September 10, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his elbow and head.

4. The claimant is entitled to a workers' compensation rate of \$215.00 for temporary total disability and \$161.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injuries to his right shoulder and knee.

2. Related medical.

3. Temporary total disability from January 5, 2004, to August 18, 2004.

4. Attorney's fees.

The claimant reserves the issue of permanent partial impairment as well as all other issues.

In regard to the foregoing issues the claimant contends that he is a 65-year-old employee of Pepper Source LTD who sustained a right shoulder and knee injury on or about January 4, 2004, while performing on the job duties. The claimant fell while hauling trash, injuring his right shoulder and right knee. Claimant was seen by Dr. Paul Daidone for these injuries on January 5, 2004. Mr. Chavez was also seen by Dr. Daidone on January 12, 2004, and February 12, 2004, for shoulder and knee pain. An MRI of the right knee taken on February 17, 2004, showed a fragmentation of the free edge of the posterior horn of the medial meniscus extending into the body compatible with free-edge tear. As a result, an arthroscopy with arthroscopic medial menisectomy and micro fracture defect was performed by Dr. Rodger Dickinson on March 3, 2004.

Claimant reported to Dr. Dickinson on March 25, 2004, with continued pain and discomfort in his right shoulder. An arthrogram done on March 30, 2004, showed a small complete tear of the rotator cuff. As a result, the claimant underwent a procedure on April 13, 2004, to repair the rotator cuff tear. Respondents have controverted the entire claim.

In regard to the foregoing issues the respondents contend that they deny that the claimant sustained right shoulder and right knee injuries arising out of and in the course of his employment. No benefits have been paid.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The respondents submitted medical records marked Respondents' Exhibit No. 1. They submitted additional documents marked Respondents' Exhibit No. 2 and Respondents' Exhibit No. 3. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he began working for the respondent on October 8 or 9, 2002, assigned to the sanitation clean up crew. The claimant testified that he did several different jobs but his primary responsibility was that of sanitation. The claimant testified that on January 5, 2004, he was working clean up and was bringing trash to the compactor when he slipped and fell on some product that had leaked out of the trash bin. The claimant testified that as he was falling he tried to grab onto something and, in fact, grabbed a hold of cardboard and

everything started falling on top of him. The claimant testified that in his fall he hit his knee, his arm and his elbow on the concrete floor. The claimant testified that the fall knocked him unconscious. The claimant stated that there was another worker with him at the time of his fall but that this worker no longer is with the respondent and he does not know this worker's name. The claimant testified that there were people coming out at around 4:00, they saw him fall and they ran to him. The claimant testified that all he could remember was hearing voices asking him if he was all right. The claimant remembers that initially he did not know anything about where he was until everything started clearing up with his vision. The claimant testified that Roy Bailey and Kelly helped him up and that he and Mr. Bailey went to the personnel office to see the plant manager. The claimant testified that he reported a work-related accident but that at the time he did not think it was serious. The claimant testified that he finished his shift that day.

The claimant testified that he was not able to sleep that night and that the next day he instructed his wife to get him an appointment with their family doctor, Dr. Daidone. The claimant testified that he was able to get in to see Dr. Daidone on January 7, 2004. The claimant testified that after seeing the doctor he returned to work for the respondent on light duty although he was having trouble walking. The claimant testified that he was taking pain medication. The claimant agreed that he was also having trouble with his shoulder, having a hard time moving it and not

being able to raise it real high. The claimant testified that he usually picks up papers and throws them in the dumpster but it was painful to do this activity. The claimant testified that he reported these problems to his wife.

The claimant testified that Dr. Daidone gave him a shot in his knee which helped him for about three days. The claimant remembers that Dr. Daidone had x-rays made of his knee and referred him to Dr. Dickinson who had him undergo an MRI. The claimant testified that Dr. Dickinson lanced his knee on March 3, 2004, and that he underwent surgery on his shoulder about three weeks later. The claimant stated that Dr. Dickinson ultimately did surgery on his knee around April 13, 2004. The claimant requested that there were periods of time where he would go back to work on light duty after his accident. The claimant testified that on August 18, 2004, Dr. Dickinson released him from his care and he was offered a job with the respondent.

The claimant testified that he reported his fall to his foreman, Ruben Morin. The claimant testified that he showed him where he fell and that the mess was still on the floor. The claimant testified that besides reporting his accident to his foreman it was also reported to the plant manager, Brett Palmer.

On cross examination, the claimant testified that since 1998 he has been receiving treatment for his left knee and had surgery on his left knee in the 80s. The claimant indicated that after his surgery he did not have any problems with his left knee. The claimant testified that after his fall on January 5, 2004, he

though he probably pulled a muscle in his shoulder but after he was seen by Dr. Dickinson and had an MRI, it was determined that his shoulder had been injured. The claimant testified that he sometimes takes Extra Strength Tylenol for his knee pain, indicating that he is trying to take himself off pain pills because they make him drowsy and he cannot drive. The claimant agreed that after his knee and shoulder surgery he under went physical therapy. The claimant stated that physical therapy helped more with his shoulder than with his knee. The claimant testified that he still has discomfort in his knee and his shoulder but he is continuing to do home exercises as recommended. The claimant testified that if he could find some sort of sitting job, he would consider going back to work. The claimant stated that he is sixty-five and has been drawing social security since he was sixty-two. The claimant testified that Medicare has not paid any of his medical expenses for his shoulder or knee problems.

Ruben Morin testified that on January 5, 2004, he was working for the respondent as a supervisor in the sanitation department. Mr. Morin testified that part of his duties as a supervisor involve taking reports on accidents. This witness testified that he recalls a fall being reported to him on January 5, 2004, involving the claimant. Mr. Morin testified that he was working in another building when he got news that the claimant had had an accident. This witness stated that he went to the building where the claimant was working and the claimant told him about his accident. Mr. Morin testified that the claimant told him that he had already seen

Brett Palmer and that after he talked to Brett, Brett told him to fill out a supervisor's report of the accident. Mr. Morin testified that the claimant told him that he was hurt but that he was ok so he took the claimant to the break room where they could be alone. Mr. Morin testified that the claimant told him what happened and that he wrote it down on the accident report. Mr. Morin testified that the claimant was complaining about his right shoulder and right knee as well as his elbow and other parts of his body. Mr. Morin testified that he and the claimant went to the area where the claimant indicated he had slipped down. This witness testified that when they arrived at the spot where the claimant had slipped down he observed that there was "a mess on the floor." Mr. Morin testified that prior to January 5, 2004, he did not observe the claimant having any problems with his right shoulder or right leg.

On cross examination, Mr. Morin testified that he filled out a supervisor's accident report and that it was accurate. This witness testified that he no longer works for the respondent.

Linda Chavez was called to testify on her husband's behalf. Ms. Chavez testified that prior to January 5, 2004, she had not observed the claimant having any problems with his right shoulder or right knee.

Dr. Paul Daidone writes on January 7, 2004, that he has seen the claimant for complaints of right knee pain off and on for several months noting that the claimant has a swollen knee that has proved to have trauma before and has trauma at work. The x-rays of

the claimant's right knee were negative and he was assessed with having right knee pain due to osteoarthritis. On February 2, 2004, Dr. Daidone writes that he has seen the claimant for follow up on his right knee pain noting that the claimant reinjured his right knee at work when he slipped. After examination, the doctor injected the claimant's knee with Lidocaine and depo-Medrol. Dr. Daidone took the claimant off work from February 2, 2004, to February 4, 2004, due to his right knee problems. On February 12, 2004, Dr. Daidone saw the claimant for his continued low back pain, right hip, right knee pain and right shoulder pain. Dr. Daidone recommended the claimant undergo an MRI of his right shoulder knee. An MRI of the claimant's right knee was performed on February 17, 2004, which revealed a moderate size joint effusion present with no demonstration of Baker's cyst and that there was a fragmentation of the free edge of the posterior horn of the medial meniscus extending into the body compatible with the free edge tear and the claimant had indication of degenerative thinning in his knee. Dr. Rodger Dickinson writes on February 25, 2004, that the claimant got injured at work about a week ago when he fell on his right side injuring his right knee and also his right shoulder. Dr. Dickinson notes that he has reviewed the claimant's MRI which shows what appears to be a medial meniscus tear. After examination, Dr. Dickinson notes that the claimant probably has a torn medial meniscus and he also is having trouble with his right shoulder which the claimant relates to his injury when he fell. Dr. Dickinson recommended that the claimant undergo an arthroscopy of

his right knee and that he would follow the claimant's right shoulder complaints to see if there is improvement. Dr. Dickinson took the claimant off work and prescribed medications as well as scheduled his arthroscopy of his right knee. The claimant underwent surgery on March 3, 2004, to repair the tear of his medial meniscus of his right knee. The claimant was taken off work from March 3, 2004, for a period of one week or until he was seen again by Dr. Dickinson. On March 10, 2004, the claimant began physical therapy to rehabilitate his right knee following surgery and to address an impingement syndrome with his right shoulder. Dr. Dickinson writes on March 10, 2004, that the claimant was being seen for follow up after his right knee surgery. Dr. Dickinson recommended physical therapy with non weight bearing functions and they also were to address his right shoulder problems. Dr. Dickinson kept the claimant off work for an additional two weeks. There is an off work slip signed by Dr. Dickinson dated March 10, 2004, indicating that the claimant should be off work until March 30, 2004. Dr. Dickinson writes on March 25 that he has seen the claimant for his right knee shoulder and right shoulder problems, noting that the claimant has been doing physical therapy for his knee and shoulder but that his shoulder is giving him a lot of pain in the impingement zone. Dr. Dickinson recommended an arthrogram of the claimant's right shoulder and recommended that the claimant stay with his exercise for his knee but to stop the exercise for his shoulder until after the test. Dr. Dickinson gives the claimant an off work slip from March 25, 2004, to April 2, 2004.

The claimant underwent an arthrogram of his right shoulder on March 30, 2004, which revealed a small complete rotator cuff tear. On April 2, 2004, Dr. Dickinson notes that the claimant's right knee is improving but that his right shoulder continues to give him problems noting that the arthrogram revealed a complete rotator cuff tear and that they were going to have to do something to repair it. Dr. Dickinson informed the claimant that he would be in a sling for six weeks, six weeks of active motion and a total of three months before he is going to be able to do any lifting. Dr. Dickinson writes that probably at least four to five months before the claimant is going to be able to do any kind of manual labor with his arm. Dr. Dickinson writes on April 2, 2004, that the claimant is to be off work until June 2, 2004, noting that he is scheduled for a repair of his right rotator cuff. The claimant underwent right shoulder repair on April 13, 2004, performed by Dr. Dickinson. Dr. Dickinson wrote an off work slip for the claimant dated April 13, 2004, taking the claimant off work until July 13, 2004, noting that the claimant had surgery on his right shoulder. Dr. Dickinson continued to follow the claimant's progress after his right shoulder surgery and on May 26, 2004, recommended that the claimant begin physical therapy for his right shoulder. On June 23, 2004, Dr. Dickinson released the claimant to return to work on June 28, 2004, with restrictions of no use of his right arm. Dr. Dickinson again writes on July 21, 2004, that the claimant can be released on partial disability to August 30, 2004, to return to work with limited use of his right arm for one month. On August

18, 2004, Dr. Dickinson notes that the claimant is on partial disability and may return to work on August 18, 2004, with the restrictions of no lifting over ten pounds with his right arm and no overhead use of his right arm for two months.

Dr. Raye Mitchell writes on October 6, 2004, that he has seen the claimant for his right knee and right shoulder after he had had surgery on both of these areas. Dr. Mitchell notes that the claimant fell at work after he had returned to work from his previous surgeries and is not doing well. Dr. Mitchell recommended physical therapy. Dr. Mitchell writes again on November 8, 2004, that the claimant's physical therapy on his shoulder is helping him but as to his knee, the claimant reports that it is no better. Dr. Mitchell notes that the claimant would be a good candidate for Synvisc.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he sustained a work related injury to his right shoulder and right knee on January 5, 2004, while working for the respondent. The claimant has testified that he slipped and fell while working for the respondent. The claimant's supervisor, Ruben Morin, has testified that on January 5, 2004, the claimant slipped and fell while working for the respondent. The claimant testified that he hurt many parts of his body, his elbow, head as well as his right shoulder and knee in his fall of January 5, 2004, although initially he thought that perhaps he was not hurt very bad. The medical records set forth that the claimant reported trauma at work

and complained of problems with his right knee and within a few weeks was having complaints of right shoulder problems. The report filled out by his supervisor sets forth that he injured his right leg, arm, head and elbow as a result of a slip and fall. This accident report which is signed by Ruben Morin is dated January 12, 2004, however, Mr. Morin testified at the hearing that he filled out this accident report with the claimant in the break room on January 5, 2004. The medical records set forth that the claimant was initially seen by Dr. Daidone for right knee pain following pain at work and again was seen by Dr. Daidone on February 2, 2004, for follow up of his right knee pain. The medical records set forth that there are objective findings that verify an injury to this claimant's right shoulder and right knee which required medical attention and surgery on both of these areas. The respondents, therefore, should pay for the cost of this claimant's treatment for his right shoulder and right knee subsequent to his work related injury of January 5, 2004. The respondents also shall pay temporary total disability for those periods of time the claimant was off work as a result of his compensable right knee and right shoulder injuries. It was agreed by the parties that if this injury was found to be compensable, that they would be able to determine the time the claimant was off work as a result of his injuries and that temporary total disability would be paid for these periods of time. Certainly, the medical records set forth where Dr. Daidone as well as Dr. Dickinson has taken the claimant off work as a result of his compensable injuries.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained compensable injuries to his elbow and head.

4. The claimant is entitled to a workers' compensation rate of \$215.00 for temporary total disability and \$161.00 for permanent partial disability.

5. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right shoulder and right knee when he slipped and fell at work on January 5, 2004. See discussion above.

6. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injuries.

7. The respondents should pay temporary total disability to this claimant for those periods of time he was off work as a result of his compensable injuries up to his release on August 18, 2004. See discussion above.

8. The respondents have controverted this claimant's right knee and right shoulder injuries.

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right knee and right shoulder on January 5, 2004, while working for the respondent.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable right knee and right shoulder injuries. The respondent should pay temporary total disability to this claimant for those periods of time he was off work as a result of his compensable injuries up until August 18, 2004.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE