

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F406130

**JIMMY EARL CONYERS,
EMPLOYEE**

CLAIMANT

**CITY OF LITTLE ROCK, ARKANSAS,
EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
BENEFITS ADMINISTRATOR**

RESPONDENT

OPINION FILED MAY 31, 2005

Hearing conducted March 2, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Phillip M. Wilson, Attorney at Law, Little Rock, Arkansas, appearing for the claimant; and

Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the source of the claimant's left knee injury, that is whether the injury resulted from pre-existing idiopathic conditions or from a compensable event at work.

The claimant contended that he sustained a compensable knee injury and should be awarded benefits, specifically including reasonably necessary medical and related expenses. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant's condition is an idiopathic problem relating to his pre-existing pathology and not resulting from an injury at work. Specifically, they contended that there was no incident of injury at work; that any knee problem is pre-existing; that a compensable injury cannot be established by medical evidence supported by objective findings, although there may be findings of pre-existing degenerative pathology; and generally that the claimant's knee problems are the result of idiopathic conditions and not an injury at work.

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 and the claimant's average weekly wage on May 12, 2004, was \$586.04.

3. The preponderance of the evidence shows that the claimant suffered a compensable injury to his left knee for which he is entitled to benefits, including his medical expenses which have been reasonably necessary in connection with his compensable injury.

4. The respondents have controverted the payment of benefits hereinafter awarded and, to the extent that indemnity benefits may be payable, 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, 56 years of age at the time of the hearing, had worked about seven years for the City of Little Rock. At the time of the injury, he was the foreman for Parks and Recreation East Maintenance.

On March 12, 2004, he noticed that water was running from an underground spigot that should have been turned off. He found the shutoff valve, kneeled down to turn it off, and twisted his left knee in the process. He testified that the spigot was underground approximately one foot. He stated that he felt a kind of quick sharp pain in his knee. He testified that he went ahead, squatted

on down, reached down under the ground, turned off the water spigot, and then when he got back up and as the day progressed, his knee got worse and he was limping bad on it. He reported the incident to his supervisor and told him that he was going to get medical attention.

He stated that he had never had problems with bending, squatting, or kneeling down before May 12, 2004, even though he had rheumatic fever as a child, which was in the back of his knee, and he had experienced leg spasms at night in the back of his left leg. He also testified that he had arthritis in his knees. He further stated that what he felt in his knee when he twisted it at work was totally different from the problems he had had from childhood with his left knee.

As to the issue of objective findings, the initial medical record from May 12 indicates that the claimant suffered a left knee strain and had degenerative changes revealed by x-ray. The record also indicates that the claimant's examination was positive for crepitus. When he returned to the doctor May 17, his condition had not improved and he was observed to have mild effusion. An MRI scan of his left knee was recommended. On May 18, 2004, Dr. James W. Bryan examined the claimant and diagnosed an acute medial meniscus tear, as well as osteoarthritis, likely related to the delayed effects of childhood rheumatic fever. The MRI performed May 19 showed evidence for a horizontal tear through the posterior horn of the medial meniscus. On August 13, 2004, orthopedic surgeon Dr. William F. Hefley, Jr., performed arthroscopic surgery which revealed a complex tear of the medial meniscus, grade 3 medial and grade 3 patellofemoral mild lateral compartment chondromalacia, and about a one centimeter osteochondral loose body. Thus, there is sufficient medical evidence, supported by objective findings, to meet the statutory requirement. At the time of the hearing, the claimant had not missed sufficient work to be entitled to temporary total

disability, and permanent anatomical impairment was among the issues reserved for another occasion.

When the record is reviewed, the preponderance of the evidence shows that the claimant sustained a compensable injury, even though his pre-existing arthritic problems may ultimately diminish his entitlement to benefits for permanent anatomical impairment, under the provisions of the Act.

The claimant's pre-existing problems are somewhat speculative in nature and are not consistent with a torn medial meniscus before the May 12, 2004, incident. The claimant's testimony, which is not contradicted by the medical record or other evidence of record, indicates that his knee was generally functional before the incident on May 12, even though he had symptoms related to other areas of his leg or knee. There is no objective medical evidence to establish an injury such as a torn medial meniscus prior to the incident at work which caused the problems that the claimant described as totally different from those prior to the event. Moreover, it has long been a principle of workers' compensation law that the employer takes the claimant as he finds him.

Additionally, the incident described by the claimant where he twisted his knee while kneeling down to turn off the spigot is sufficient to describe an incident of injury. This event is distinguishable from idiopathic falls where the claimant's knee simply gave out because of pre-existing conditions. Here, although the claimant had pre-existing problems, the twisting motion is the most likely cause of the injury to the claimant's medial meniscus.

At the time of the hearing, the claimant's only specific request for benefits related to medical care, which has been reasonably necessary in connection with his compensable injury. Even though

his possible entitlement to permanent disability benefits may be affected by his pre-existing condition, the overall compensability of the claim should not be defeated.

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