

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407137/F502421

JUSTIN FISHER	CLAIMANT
THREE STATES SUPPLY CO., INC.	NO. 1 RESPONDENT
GALLAGHER BASSETT INSURANCE CARRIER	NO. 1 RESPONDENT
LEWIS FORD	NO. 2 RESPONDENT
FARMERS INSURANCE CO. INSURANCE CARRIER	NO. 2 RESPONDENT

OPINION FILED SEPTEMBER 27, 2005

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents No. 1 represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

Respondents No. 2 represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 28, 2005, 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 April 15, 2005. 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 June 10, 2004, the relationship of employee-employer-carrier existed between Respondents No. 1 and the claimant.

3. On June 16, 2003, the relationship of employee-employer existed between Respondent No. 2 and the claimant.

4. Respondent No. 2 agree that on June 16, 2003, the claimant sustained a compensable injury to his left knee.

5. Medical bills have been paid to August 18, 2003, by Respondent No. 2.

6. The claimant is entitled to a weekly compensation rate based on an average weekly wage of \$320.00 which would entitle him to a temporary total disability rate of \$213.00 and a permanent partial disability rate of \$173.00.

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

1. Compensability of the claimant's injury to his left knee on June 10, 2004, and/or a recurrence of his June 16, 2003, injury.

2. Related medical.

3. Temporary total disability from June 11, 2004 to August 15, 2004.

4. Attorney's fees.

In regard to the foregoing issues the claimant contends that he was injured on June 10, 2004. His left knee was injured when he slipped on wet metal as he was pulling a two wheeler.

In regard to the foregoing issues Respondents No. 1 contend that the claimant did not sustain a compensable injury and the problem that he has at this point is related to long standing left knee problems. Further, for the one month that the claimant worked

for the respondent employer he complained of left knee problems from the beginning.

In regard to the foregoing issues Respondent No. 2 contends that all appropriate benefits were paid associated with his injury while working for respondent employer and that additional medical and TTD is not reasonable and necessary. Respondents contend the claimant has filed a claim for an injury of June 10, 2004, and that the employer/carrier on risk at the time of that injury should be liable for any benefits associated with the claimant's continued left knee problems.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. Respondents No. 1 submitted medical evidence marked Respondents No. 1's Exhibit No. 1. Respondents No. 2 submitted non medical evidence marked Respondents No. 2's Exhibit No. 1 and medical evidence marked Respondents No. 2's Exhibit No. 2. The parties jointly submitted the deposition of Dr. Coker marked Joint Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that he is twenty-six years old and was working for the respondent on June 10, 2004, as a driver. The claimant testified that he was using a two-wheel dolly to load his truck when the dolly got caught on some sheet metal and when he tugged on it, he felt his knee pop and he fell down. The claimant testified that the respondents sent him to Dr. Oates that day and

the doctor gave him medication, a brace and put him on light duty. The claimant testified that he returned to work for the respondent but after about a week they told him they did not have light duty available and sent him home. The claimant testified that he was next seen by Dr. Wilson who referred him to Dr. Coker but when the claimant arrived for his appointment he was informed that it was not authorized. The claimant testified that he went to Dr. Arnold in November and is still under his care.

The claimant testified that he returned to work for another employer on August 15, 2004. The claimant testified that he is able to do this work although he continues to have problems with his left knee in that he experiences instability and pain. The claimant testified that he has continued to do home exercises which were recommended to him by his physician.

The claimant testified that in June 2003 he was working for Respondent No. 2. The claimant testified that he was bringing some parts downstairs and when he stepped down, his knee just popped and he hit the ground. The claimant testified that prior to this injury he had never had any problems with his left knee. The claimant testified that Respondents No. 2 sent him to the Lowell Medical Clinic and the doctor there gave him aspirin, a brace and told him to come back in a week. The claimant testified that when he was seen at the Lowell Clinic again, he asked to be referred to a specialist and was referred to Dr. Coker. The claimant testified that when Dr. Coker examined him he recommended an MRI and after Dr. Coker reviewed the MRI results, the doctor returned him to

work. The claimant testified that when he returned to work he was having problems with instability as well as trouble going up and down stairs. The claimant testified that he did not return to Dr. Coker because it was his understanding he had a sprain and would need to work through it. The claimant testified that Respondent No. 2 terminated him in February 2004. The claimant testified that since his June 2003 injury, his left knee has never been the same, noting that it was unstable and he had trouble sleeping at night because of the pain. The claimant testified that in 1999 he had a four-wheeler accident in which he injured his right knee which resulted in him being treated by Dr. Coker and eventually having surgery.

On cross examination by Respondents No. 1, the claimant agreed that the instability, pain and difficulty with sleeping at night are the same complaints and problems he had described as having following his 2003 left knee injury. The claimant testified that he has continued to do the same home exercises since his 1999 right knee injury in hopes of strengthening his quads. The claimant testified that the work he is currently doing is very similar as to how physical it is as the work he was doing for Respondent No. 1. The claimant agreed that his knee has gotten better but it has never gotten back to the way it was before June 10, 2003. The claimant testified that his June 2003 incident involved his knee twisting as he was stepping down which resulted in a very large pop. The claimant testified that his injury in 2004 did not involve a twist, his knee just kind of fell in. The claimant again

testified that after Dr. Coker released him after his June 2003 injury, his knee was painful, unsteady and would pop and grind. The claimant further agreed that this condition continues to date. The claimant testified that even though he was off work for a period of time following his 2004 injury, he has continued to have instability and pain with his knee. The claimant testified that he understood that the doctor had recommended that he lose weight in order to hopefully improve both his right and left knees. The claimant testified that since the year 2000 he has gained approximately eighty pounds. The claimant explained that due to the instability of his knee, exercise is difficult. The claimant agreed that when he was seen by Dr. Arnold in November 2004 and the doctor reviewed his two MRIs, it was his understanding that Dr. Arnold thought his knee problems pre-existed his June 10, 2004, accident.

On cross examination by Respondents No. 2, the claimant agreed that following his June 16, 2003, incident he was last seen by the doctor in August 2003. The claimant testified that at that time he was working full duty for Respondent No. 2. The claimant testified that following his first left knee injury, he did not have any trouble doing his job due to his knee. The claimant testified that he was working in the parts department and this was pretty much light duty anyway. The claimant testified that after he was terminated by Respondent No. 2, he then went to work for Superior but due to foot problems and standing for a ten-hour shift, he was unable to do this job. The claimant testified that when he went to

work for Respondent No. 1, he did not mention anything about having any left knee problems but did make them aware that he had had right knee surgery. The claimant testified that as far as his job duties for Respondent No. 1 were concerned he did not have any problem with his knee doing this work. The claimant agreed that he had had no medical treatment for his left knee from August 2003 through May 2004. The claimant agreed that despite his earlier testimony that he continued to have popping, grinding and instability problems with his left knee, he still did not get any medical treatment until June 2004. The claimant testified that in June 2004 is when he slipped on the wet sheet metal which was on the floor, felt a pop, fell onto the sheet metal and immediately had pain and swelling in his left knee. The claimant agreed that following this accident was the first time that he was taken off work or put on light duty. The claimant further agreed that he left or quit working for Respondent No. 1 because of his knee injury and continued to be off work until he began work for National Home Center on August 15, 2004.

On redirect examination, the claimant testified that when he was last seen by Dr. Coker in 2003, it was his understanding, after having gone through an MRI, that he had a left knee sprain.

The medical records set forth that the claimant had follow up with Dr. Konstantin Berestnev on June 23, 2003, for his left knee sprain. Dr. Berestnev indicates that the claimant has rather vague pain complaints over his knee which he cannot pinpoint to any particular anatomical structure and he does not have any objective

findings. The doctor continues to write that the claimant's knee is not unstable and that he has a negative Lachman's and grinding test. Aleve was prescribed and an MRI was scheduled. The claimant underwent an MRI of his left knee on July 7, 2003. Dr. Berestnev writes on July 29, 2003, that he has seen the claimant after his MRI which revealed findings which were suspicious of either a very vertical ACL or complete ACL tear and some changes consistent with medial collateral ligament strain but no evidence of a complete tear. The doctor notes that the test also revealed degenerative changes of the articulate cartilage and all the compartments of the knee which is suggestive of chronic degenerative osteoarthritis. Dr. Berestnev notes that the claimant continues to complain of pain and feeling unsteady on his left leg, noting that his left knee pops a lot and gives out. Dr. Tom Coker writes on August 18, 2003, that after reviewing the claimant's MRI and an examination of the claimant, he opines that the claimant just has a sprained knee and does not think he has an ACL tear.

The claimant was seen by Dr. Randall Oats on June 10, 2004, after having tripped at work. Dr. Oats writes that he cleaned up and dressed a superficial laceration on the claimant's right calf, noting that the claimant's ACLs are a bit loose but no definite effusion noting that the claimant is morbidly obese which makes assessment difficult. After examination, the claimant was assessed with having a sprain to his left knee and was instructed to wear a brace and to avoid squatting and climbing until his knee pain subsides. The claimant was seen by Dr. R. B. Wilson on June 17,

2004, for follow up to his left knee sprain. The doctor notes that the claimant has worn his knee brace as prescribed but has quit taking his pain medications as they are not needed and currently needs a note to return to work. It was recommended that the claimant continue with his knee immobilizer and will need to do sit down work until evaluated by Dr. Coker. Dr. Wilson also sets forth that the claimant will take undetermined weeks to heal. Dr. Christopher Arnold writes on November 4, 2004, for his left knee pain and instability. The claimant gave Dr. Arnold a history of a slip and fall accident on June 10, 2004, while working for Respondent No. 1. Dr. Arnold, upon examination, opines that it does appear to be a work related injury based on the claimant's history, noting further that the claimant has clinical findings consistent with ACL tear and he would not rule out other ligamentous injury or meniscal injury. The claimant underwent an MRI of his left knee on December 1, 2004. Dr. Arnold writes on January 18, 2005, that the claimant had an injury to his left knee two years ago and was treated by Dr. Coker who read his MRI at that time as being completely clean and he had no further problems. Dr. Arnold notes that the claimant felt a pop and his knee gave way with immediate pain and swelling when he slipped and fell on June 10, 2004. Dr. Arnold writes that the claimant complains of persistent instability symptoms and has undergone an MRI which he paid for himself. Dr. Arnold reviewed the claimant's MRI and notes that the claimant has an ACL tear and there are also some abnormalities about the tibia plateau possibly an occult fracture.

Dr. Arnold writes that the claimant's problems appear to be coming from the ACL tear which the claimant wants to have fixed. Dr. Arnold further notes that there is the issue of the claimant's contusion situation laterally and he told the claimant they could not rule out a stress fracture. It is the doctor's suspicion that it all has to do from the resolving contusion from the initial injury when the claimant's knee gave way on him. Dr. Arnold writes that the claimant is not tender and he does not have any pain when walking and recommended that he work on his quads and to avoid impact activities.

Dr. Tom Coker, in his deposition taken on June 22, 2005, stated that the MRI of the claimant's left knee made in July 2003 was suspicious of an ACL tear but not conclusive. Dr. Coker explained that the chronic degenerative osteoarthritis found in the claimant's left knee was just bad luck and was a result of the aging of the claimant's knee, not a result of the injury in 2003. Dr. Coker testified that he saw the claimant following his MRI as follow up for a possible ACL tear and after examination and evaluation of the claimant's MRI as well as talking with the claimant, he did not think that the claimant had a tear. Dr. Coker stated that the claimant did not talk about his knee rotating at that time. Dr. Coker testified that at that time, he assessed the claimant with having a sprain. Dr. Coker stated that he has not seen the claimant since August 2003. Dr. Coker was shown the MRI of the claimant's left knee taken on December 1, 2004, and states that this test result indicates that the claimant's ACL is not

demonstrated, compatible with a tear, and the cartilage is fine, further noting that he had a non displaced fracture in his tibia. Dr. Coker testified that the radiologist who read this latest report does not say that it is a definite tear, he just says it is not well demonstrated and, therefore, a tear is suspected. When asked, Dr. Coker stated that in comparing the 2003 and the 2004 MRIs, there is pretty much the same language used in both. Dr. Coker was given a summary of the claimant's work history since his July 2003 MRI and Dr. Coker agreed that his diagnosis of a strain was consistent. Dr. Coker was given a summary of the claimant's work injury with Respondent No. 1 in June 2004 further adding that the claimant started complaining of problems with his knee rotating after that and would that be more indicative of an ACL problem. Dr. Coker responded yes that it was beginning to sound more like an ACL when they talk about rotation. Dr. Coker was asked by Respondents No. 2 if there was any way he could state which injury could account for his need for treatment today, Dr. Coker responded, "No. There could be no way I could tell." Dr. Coker stated that if the claimant was able to work a full day without hurting then he would have assumed that his symptoms would have resolved before he began working for Respondent No. 1.

After a complete review of all the testimony and evidence presented in this matter, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left knee on June 10, 2004. It is not questioned that the claimant sustained an injury to his knee on June 16, 2003,

while working for Respondent No. 2 but there were no objective medical findings on which to establish a compensable injury and although the claimant has testified that he continued to have some problems with his knee, he was able to continue to work at his regular job for Respondents No. 2 until he was terminated in February 2004. The claimant sought no medical treatment for his knee from the fall of 2003 until June 2004 after he had slipped while pulling on a two-wheel dolly while working for Respondent No. 1 since that time he has continued to require and need medical treatment for his left knee. The claimant has testified to a specific incident while working for Respondent No. 1 and there are objective medical findings on a second MRI indicating an ACL tear. Dr. Coker has also indicated that the claimant now is talking and making statements like someone who has and is experiencing an ACL tear. Respondents No. 1, therefore, should pay for the cost of this claimant's medical treatment for his left knee subsequent to June 10, 2004, as well as pay for temporary total disability from the date that they terminated the claimant by not providing him light duty within his restrictions from June 11, 2004, to August 15, 2004, when the claimant found new employment.

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On June 10, 2004, the relationship of employee-employer-carrier existed between Respondents No. 1 and the claimant.

3. On June 16, 2003, the relationship of employee-employer existed between Respondent No. 2 and the claimant.

4. Respondent No. 2 agree that on June 16, 2003, the claimant sustained a compensable injury to his left knee.

5. Medical bills have been paid to August 18, 2003, by Respondent No. 2.

6. The claimant is entitled to a weekly compensation rate based on an average weekly wage of \$320.00 which would entitle him to a temporary total disability rate of \$213.00 and a permanent partial disability rate of \$173.00.

7. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left knee while working for Respondent No. 1 on June 10, 2004. See discussion above.

8. Respondents No. 1 should pay for the cost of all reasonable and necessary medical treatment for this claimant's left knee subsequent to June 10, 2004. See discussion above.

9. Respondents No. 1 should pay temporary total disability to this claimant from June 11, 2004, until August 15, 2004. See discussion above.

10. Respondents No. 1 have controverted this claim in its entirety.

11. 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 left knee while working for Respondent No. 1 on June 10, 2004. Respondents No. 1 should pay all reasonable and necessary medical treatment for this claimant's left knee from June 10, 2004.

Respondents No. 1 should pay temporary total disability to this claimant from June 11, 2004, to August 15, 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.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE