

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F412040

**LARRY MICHAEL HARDCASTLE,
EMPLOYEE**

CLAIMANT

**SOUTHWEST AIRLINES CO.,
EMPLOYER**

RESPONDENT

**ACE AMERICAN
INSURANCE CO.,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JULY 14, 2005,

Pursuant to a hearing conducted April 19, 2005, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Steven R. McNeely, Attorney at Law, Little Rock, Arkansas, appearing for the claimant, and

Mr. Paul M. Gehring, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over compensability of an injury to the claimant's right knee and entitlement to associated benefits.

The claimant contended that on or about October 18, 2004, he suffered a compensable right knee injury and should be awarded benefits, including medical expenses, such as the expenses of surgery performed by Dr. Gordon Newbern, and also temporary total disability benefits from the date of injury until March 23, 2005, when he returned to work. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant suffered from a pre-existing arthritic condition and did not sustain an injury to his knee during the employment.

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 October 18, 2004, was sufficient to entitle him to the maximum compensation rates.

3. The preponderance of the evidence shows that the claimant suffered a compensable right knee injury October 18, 2004, arising out of and in the course of his employment, and, as a result of his scheduled injury, he is entitled to benefits, including the expenses of his surgery and the other reasonably necessary medical expenses he has incurred and temporary total disability benefits from the date of injury until he returned to work March 23, 2005.

4. 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, 52 years of age at the time of the hearing, has been employed as a ramp agent by Southwest Airlines for sixteen years. On October 18, 2004, he injured his right knee when he was taking luggage from a conveyor belt, turning, and placing it into various carts. His knee was injured when he picked up a bag, planted his foot, twisted to put it into a cart, and felt a pop, along with pain.

He stated that his knee had never popped like that or hurt like that before and that he could not straighten out his leg after the incident.

He told his supervisor within a few minutes and sought medical care from the company physicians at Concentra Health. On the day of the injury, Concentra's Dr. Scott W. F. Carlee examined the claimant, diagnosed his condition as a sprain of the medial collateral ligament of the knee, and recommended a knee immobilizer, crutches, and medication. He also indicated the claimant could return to sedentary work, but the claimant's uncontradicted testimony showed that no such work was available with the respondent employer.

On October 20, the claimant was seen by Concentra's Dr. William Warren who also diagnosed a knee strain as well as knee pain and recommended an MRI. The radiologist's report dated October 28, 2004, indicated that the MRI revealed several problems with the claimant's knee, including a tear of the medial meniscus, and concluded with the diagnosis of osteoarthritis. Dr. Warren summarized the MRI in an October 29 report as showing degenerative changes. He then diagnosed the claimant with chondromalacia, which the MRI report had noted in all three compartments of the claimant's knee. However, Dr. Warren did not mention the torn medial meniscus but indicated that the claimant had reached maximum medical improvement and could return to regular duty as of October 29, 2004. Later, when asked by insurance counsel, Dr. Warren faithfully responded that the medial meniscus tear was not work related but resulted from pre-existing arthritis, and fell under the exacerbation of a pre-existing condition terminology.

However, the claimant was also treated by a specialist, perhaps more independent than the company physicians, Dr. D. Gordon Newbern, an orthopedic surgeon who recommended arthroscopic surgery, which he performed December 15, 2004. His post-operative diagnosis was

acute-appearing posterior horn medial meniscus tear, right knee, and chronic appearing degenerative fraying interior horn lateral meniscus. A letter dated November 29, 2004, to claimant's counsel, indicates that the cause of the meniscus tear was twisting motion, which occurred at work October 18, 2004. He also indicated that the chondromalacia was more likely a longstanding degenerative change. His note of November 29, 2004, further explains his opinion that the meniscus tear and the related symptoms are attributable to the claimant's activity at work. Neither Dr. Newbern nor Dr. Warren was deposed and, without more, Dr. Newbern's opinion is more persuasive and entitled to greater weight than that of Dr. Warren concerning legal causation of the claimant's knee injury. Indeed, even Dr. Warren indicated that the problem is an exacerbation of a pre-existing condition, a view consistent with the legal concept of an aggravation of a pre-existing condition. Moreover, it is well established that the employer takes the claimant as he finds him and is responsible for such medical care as may be reasonably necessary in connection with the compensable injury, even though related pathology is also involved.

The record also shows that the claimant's injury rendered him unable to perform his normal work activities and that no other appropriate work was afforded him, so that he is entitled to temporary total disability for this scheduled injury from the date of the injury until he returned to work March 23, 2004.

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