

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E905432, F100346 & F010950**

<b>DONALD L. HEAGWOOD, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>HELENA WEST HELENA SCHOOLS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED SEPTEMBER 1, 2005**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on June 3, 2005 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of additional medical treatment, additional temporary total disability benefits and attorney's fees.

At issue is whether or not the claimant's total knee replacement is causally related to his previous compensable knee injuries pursuant to Ark. Code Ann. §11-9-508. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on February 1, 1999, May 5, 1999 and January 2, 2001 at which time the claimant sustained compensable injuries at a compensation rate of \$373.00. Benefits have been paid pursuant to previous decisions, (see orders filed by the Administrative Law Judge on June 8, 2001 and July 14, 2003).

The claimant contends his compensable knee injuries resulted in a total knee replacement. He seeks payment of medical expenses associated with Dr. Hahn's treatment, temporary total disability benefits from July 21, 2004 to a date yet to be determined and attorney's fees.

The respondents contend all appropriate benefits have been paid. The knee replacement surgery is not a compensable consequence of the original work-related injuries. The respondents also contend the treatment is not reasonable and necessary nor causally related to the compensable claims. His present condition is the result of preexisting conditions (aging and osteoarthritis).

The claimant, age 65 (D.O.B. April 9, 1940) has a sixth grade education with training in the Army National Guard (21 years). His work experience includes full and part-time work in law enforcement (police officer/deputy sheriff), and jobs as a volunteer fireman, radio operator and with Mohawk Rubber. His health history includes a work-related back injury with a laminectomy, arthritis (hands, shoulders, knees), hypertension, stomach and prostate problems. The claimant began work for the respondent-employer in September 1984 and retired from there on October 2, 2001.

The claimant sustained a series of work-related injuries to his knees:

2-1-99	Rt. Knee
5-5-99	Lt. Knee, fell off ladder
1-2-01	Lt. Knee, fell on ice
7-_-01	both knees bruised in altercation

The claimant had two arthroscopic surgeries, took pain pills and was administered injections but remained symptomatic with pain, limping and the development of a knot on his left knee. Once the claimant decided to submit to the total knee replacement surgery, he began calling the adjuster. He called and left messages ten times within the month prior to the surgery but the adjuster would not return his calls.

The surgery was performed on July 21, 2004. A couple of days later, he called the adjuster and this time she returned his call. The claimant stated she was rude to him and told him she would not pay for his surgery. The adjuster was not called as a witness to refute this testimony.

The claimant felt the surgery was beneficial and relieved his pain and the need for medication. This statement is confirmed by Dr. Hahn's report of December 6, 2004. He still lacks a little strength in his leg, finding it difficult to walk upstairs and put on his shoes and socks, but overall he continues to improve.

## MEDICAL EVIDENCE

Medical records show the claimant had surgery on November 15, 2000 for degenerative joint disease and a torn medial meniscus. A second operation was performed February 13, 2001 for a recurrent tear. The claimant was also diagnosed with Grade III Chondromalacia.

Follow-up reports in 2003 note chronic left knee pain and locking and reports in 2004 refer to bilateral knee pain. A Form AR-3 dated April 25, 2002 mentions bilateral knee pain with the notation, "Knees are no better and no worse. Current treatment has plateaued. Not ready for total knee replacement." X-rays taken in 2004 show "mildly severe" osteoarthritis of both knees.

The claimant has been treated with medication and injections but remained symptomatic. A total knee replacement of the left knee was performed in 2004 by Dr. Herbert Hahn. The discharge summary refers to the surgery as "elective," while the History and Physical report indicates the claimant's left knee is no longer responsive to conservative treatment.

### Dr. Zelnick's Pre-Admission Report:

Mr. Heagwood has been suffering bilateral knee pain now for a considerable period, perhaps for 3 to 5 years. He has gotten to the point where injection therapy with cortisone no longer helps. X-rays of both knees show considerable osteoarthritis according to the patient, and while apparently the right one shows more degenerative changes than the left, the left one hurts more. Both have "locked up", and caused considerable pain in their release. The right one, oddly enough, usually lock up while he is in bed, the left one while he is ambulatory. He recalls a recent trip to the grocery and to the hardware store where the left one became rapidly and increasingly uncomfortable, whereas the right one only swelled up. He has had no specific trauma. He has lead a very active life now at 64 having worked first as a full duty policeman and also retiring from the National Guard working in the West Helena School as a maintenance man, and the Mohawk Rubber Company for some 20 odd years.

BONES, JOINTS AND EXTREMITIES: See above. He has no prior history of major inflammatory arthritic complaints to suggest rheumatoid arthritis. He does recall falling off of a ladder wherein both x-rays in 1999 and he thinks this may have contributed to his knee pain as it seems to have been the outset of a more generalized discomfort.

## FINDINGS AND CONCLUSIONS

\_\_\_\_\_A compensable injury is one arising out of and in the course of employment, Ark. Code Ann.

§11-9-102(4)(A)(1). The claimant must prove, among other things, a causal relationship between his employment and the injury. Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002).

The Court has held that if:

[a] claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the [C]ommission's refusal to make an award. Clark v. Ottenheimer Bros., 229 Ark. 383, 314 S.W.2d 497. But if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the [C]ommission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172.

Hall v Pittman Constr. Co., 235 Ark. 104, 105-106, 357 S.W.2d 263, 264 (1962).

I find the claimant's series of injuries to his knees has combined with the osteoarthritis to necessitate a total knee replacement. Pearline Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004).

It is clear from the medical records that the option of a total knee replacement was discussed several years ago.

As I interpret the medical evidence, the procedure is "elective" only to the extent that the patient decides when he or she can no longer endure the pain that is increasingly unresponsive to medication. In the claimant's particular case, he was unable to ingest several of the recommended prescriptions due to gastric complications. Yet he continued working and unfortunately sustained a series of injuries to his knees culminating in the need for additional medical treatment.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on February 1, 1999, May 5, 1999, January 2, 2001 and July 2001, when the claimant sustained compensable bilateral knee injuries at a compensation rate of \$373.00.
2. The claimant's left total knee replacement is causally related to his compensable injuries as an aggravation

of a preexisting condition.

3. The replacement surgery was reasonable and necessary to address the claimant's pain which was unresponsive to medication.
4. Respondents are directed to pay medical expenses associated with Dr. Hahn's treatment within thirty days pursuant to Rule 30.
5. Claimant is not entitled to temporary total disability benefits as he is no longer in the workforce. Temporary total disability is a substitute for salary and in this case, the claimant has retired.
6. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.
7. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21, 1990)(D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by the respondent, directly to the claimant's attorney.

#### **AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge