

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201042

TED O. HOBBS, EMPLOYEE

CLAIMANT

HILAND DAIRY CO., EMPLOYER

RESPONDENT

CRAWFORD & CO., TPA

RESPONDENT

OPINION FILED APRIL 7, 2005

Hearing before Administrative Law Judge J. Mark White on February 24, 2005, in El Dorado, Union County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 24, 2005, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on January 10, 2005, and a Prehearing Order was entered that same day. A copy of the January 10, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including December 28, 2001; that on December 28, 2001, the claimant sustained a compensable injury to his left knee; that respondents accepted the December 28, 2001, injury as compensable and paid benefits; and that the claimant earned an average weekly wage of \$574.54, entitling him to a compensation rate of \$383 for total disability and \$287 for permanent partial disability. At the hearing, the parties further stipulated that the claimant was released by his doctor to return to regular-duty work on February 15, 2002; and that the claimant drew unemployment benefits from April 20, 2002, through October 27, 2002, at the rate of \$330 per week.

The parties agreed that the issues to be presented were whether additional medical treatment is reasonably necessary in connection with the compensable injury; and whether the claimant is entitled to temporary total disability benefits.

The claimant contends that additional medical treatment, including treatment and a possible arthroscopic debridement by Dr. Gregg Massanelli, is reasonably necessary in connection with his compensable injury; and that if he is entitled to medical treatment that he will also be entitled to temporary total disability benefits for his time off work for such medical treatment. At the hearing, the claimant also contended he was entitled to temporary total disability benefits from November 2002 through May 2003.

Respondents contend that all appropriate benefits have been paid with regard to the claimant's compensable injury; that any current need for medical treatment is associated with a pre-existing or underlying condition for which respondents are not liable; that the medical documentation does not support the need for additional medical treatment and the same is not reasonable and necessary; that the medical records do not support entitlement to temporary disability benefits or permanent partial disability benefits for the claimant's compensable injury; and that the claimant sustained an independent intervening cause on July 15, 2004, sufficient to relieve the respondents of their liability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby

accepted as fact.

3. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury.
4. The claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.
5. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The claimant worked as a supervisor for the respondent-employer. In May 2001 he sustained an injury to his left knee while stepping out of a milk truck in Waldo. He did not report the injury, nor did he seek medical treatment for it. In December 2001 he again injured his left knee, this time while pulling a pallet of milk crates up a ramp in El Dorado. He reported this injury, and the respondents accepted the injury as compensable. The claimant first treated with Dr. Smart, whose records were not introduced herein. He was then referred to Dr. Greg Massanelli.

Dr. Massanelli diagnosed "left knee pain following a twisting injury." An

MRI revealed "tricompartamental arthritis, a moderate effusion, and significant attritional changes of the medial meniscus but no obvious unstable chondral fragments." Dr. Massanelli prescribed medication and physical therapy. On February 21, 2002, Dr. Massanelli released the claimant from care. He recorded that the claimant's knee was doing better, despite an occasional "catching sensation medially." He released him to return to regular-duty work, but noted, "If his knee flares back up or if he is unable to do what he needs to do, my recommendation would be to do an arthroscopic debridement of the knee."

By this time the claimant had voluntarily resigned from the respondent-employer, effective February 15, 2002. The claimant then went to work for the El Dorado office of United-Bilt Homes. He worked there for two months until the office closed and he was laid off. He drew unemployment compensation through October. In May 2003, went to work managing El Dorado Quick Lube.

The claimant sought no medical treatment for his knee after the February 2002 release, up until August 2004. In July 2004, the claimant testified, he tripped over a ladder at El Dorado Quick Lube and sustained swelling in his left knee as a result. He reported this as a work injury, and it was accepted by El Dorado Quick Lube as a compensable injury. He saw Dr. Massanelli for this injury on August 3, 2004, and the doctor noted the claimant's complaints of continued catching in his left

knee. Dr. Massanelli diagnosed “tricompartamental osteoarthritis of the left knee exacerbated by a twisting injury” and recommended another MRI exam. He wrote in his notes, “I told him if [the MRI] does not show any acute changes, my recommendation will be nonoperative. If it shows any unstable articular cartilage fragments, then he may need arthroscopic intervention.” The MRI was negative, and the claimant returned to Dr. Massanelli on August 10. The doctor concluded: “At this point he is doing okay. There is no new work-related injury. As far as his arthritis goes, he has reached maximum medical improvement. There is no permanent partial disability. I will check him back as needed.”

II. Adjudication

A. Additional Medical Treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

The claimant contends that he is entitled to additional medical treatment, possibly including arthroscopic surgery. It is true that when Dr. Massanelli last saw

the claimant in 2002, he noted in his chart, "If his knee flares back up or if he is unable to do what he needs to, my recommendation would be to do an arthroscopic debridement of the knee." However, by 2004 Dr. Massanelli had evidently changed his mind. He noted on August 3, 2004, that if the pending MRI exam were negative, his recommendation would be "nonoperative." The MRI was indeed negative, and on August 10 Dr. Massanelli released him from care, noting: "There is no new work-related injury. As far as his arthritis goes, he has reached maximum medical improvement. There is no permanent partial impairment. I will check him back as needed." Dr. Massanelli noted the continued catching incidents in the claimant's left knee, yet he made no recommendation of surgery or other treatment.

In other words, there is no unfulfilled recommendation from any doctor that the claimant undergo surgery or any other medical treatment for his compensable injury. Given that the claimant's symptoms have not changed markedly since Dr. Massanelli released him from care, it would require speculation and conjecture for me to conclude that additional treatment is necessary, and such can never substitute for credible medical evidence. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1980). Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable injury.

B. Temporary Total Disability

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of his injury will permit, and there is nothing further in the way of treatment that will improve his condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The claimant was released to return to work in February 2002, and by his own admission he returned to work for a different employer. That employment lasted only two months, but it ended on account of the employer closing, not on account of the claimant's compensable injury. An employee is not entitled to temporary total disability benefits after he returns to work. ARK. CODE ANN. § 11-9-521 (a). I find that the claimant successfully returned to work after his injury. Moreover, the claimant was released from care by his doctor in February 2002 and received no more medical treatment until August 2004. An employee is not entitled to temporary total disability benefits after his healing period has ended. ARK. CODE ANN. § 11-9-521 (a). I find that the claimant's healing period ended no later than

February 21, 2002. The claimant seeks indemnity benefits from November 2002, through May 2003, months after the end of his healing period. I conclude that the claimant has failed to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits.

AWARD

The claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment or temporary total disability benefits. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge