

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F306411

JAMES S. LEONARD, EMPLOYEE

CLAIMANT

**HAMBURG PUBLIC SCHOOLS,
EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED OCTOBER 19, 2005

Submitted on the record before Administrative Law Judge Cynthia Estes Rogers.

Claimant represented by Mr. Mike J. Etoch, Jr., Attorney at Law, Helena, Arkansas.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

This case was submitted on briefs to determine the issue of whether claimant sustained a permanent partial impairment.

According to the Prehearing Order filed April 11, 2005, the parties stipulated to the following:

- 1) that a compensable right knee injury occurred on October 15, 1999;
- 2) that the claimant earned an average weekly wage of \$543.46; and
- 3) that some, if not all, medical expenses have been paid by respondents.

Claimant contends that he has not received permanent partial disability benefits to which he is entitled pursuant to the 17 percent impairment rating issued to him by Dr. Kenneth Martin.

Respondents contend that the claimant has been provided all appropriate benefits to which he is entitled; specifically, respondents have paid all of claimant's reasonable and necessary medical expenses, and, further, respondents assert that claimant did not sustain any permanent impairment and therefore is not entitled to any permanent partial disability benefits. Respondents contend that, pursuant to the April 29, 2003, report of Dr. James Mulhollan, claimant was not assessed an impairment rating.

STATEMENT OF THE CASE

The facts of this case are generally undisputed. In October of 1999, claimant was working as an assistant football coach for the Hamburg Public School. During a game, claimant's right knee was injured when a play came to the sidelines, knocking players and the coach over. Since that time, respondents have accepted claimant's injury as compensable and paid his medical expenses. Claimant did not claim any temporary total disability benefits, as he always resumed his duties as a coach under contract and was paid his salary.

Following the original injury in October of 1999, claimant has had three arthroscopies for meniscectomy and debridement. The first surgical procedure was

performed by Dr. Walter John Giller shortly after the injury and was based on an MRI showing that claimant had a tear of the lateral meniscus of the right knee, plus an osteochondral fracture of the meniscus. The tear in the meniscus was removed and the osteochondral defect was shaved.

Approximately three months later, in January of 2000, Dr. Giller performed a second surgery, removing the debris associated with the osteochondral defect, and performing chondroplasty of the joint cartilage. Claimant continued to have problems. Dr. Giller retired and turned his practice over to Dr. Gregg Massanelli. Dr. Massanelli gave claimant two injections in the knee and placed him on physical therapy. After no improvement, Dr. Massanelli performed a diagnostic arthroscopy and then referred claimant, with respondents' approval, to Dr. Scott Bowen, a specialist in Little Rock.

Claimant was treated by Dr. Bowen for most of 2000. Dr. Bowen tried a series of epidural injections that were unsuccessful. He then recommended a brace for claimant's knee and, when the series of injections failed, he recommended a meniscal allograft reconstruction and arthroscopy. Respondents refused to approve any of these recommendations or pay for any further treatment by Dr. Bowen. Respondents referred claimant to Dr. James Mulhollan.

Dr. Mulhollan wrote in September of 2000 to Kim Boswell, of Risk Management, as follows:

This sort of outcome after lateral meniscectomy is not too infrequent, unfortunately. Of course, it is quite unfortunate for the patient because there is no quick remedy. Such a patient seems to be an ideal candidate for a lateral meniscus transplant. I have not had personal experience with this procedure and have some pessimism about the possibility of its helping. In this geographic vicinity, the doctor with the greatest experience with this procedure is Walter Shelton in Jackson, Mississippi. Lake Village is only about 125 miles from there. It will probably be worthwhile for the patient to take his x-ray studies and get Dr. Shelton's opinion.

Dr. Mulhollan also recommended a series of exercises and modification of activities and started claimant on a regimen of Vioxx and Celebrex. However, according to claimant, the appointment with Dr. Shelton was never arranged, and Dr. Mulhollan continued to treat claimant for the next year and a half.

On March 13, 2003, Dr. Mulhollan performed an MRI on claimant's right knee. The MRI showed that the lateral meniscus had been removed and that there were no tears on the anterior-posterior horns. It showed that there were signal changes that are compatible with a minimal undersurface tear and some signal change involving the proximal-most fibers of the anterior cruciate ligament. It showed that there may have been a few loose bodies in the anterior femorotibial joint space and that there was cartilage loss of the femoral head where early subchondral changes are seen and evidence of early osteoarthritis in the femur compartment. Dr. Mulhollan interpreted the MRI to be inconclusive as to a possible tear on the underneath surface of the medial meniscus and stated that, in his opinion, it would take an arthroscopy

of the knee to determine this, but, if it were so, it was a “new development and is, therefore, assumed not to be related to the patient’s job injury.” Based on this, Dr. Mulhollan did not assess any impairment. He specifically opined,

I do not believe he has a physical impairment relating to his job injury. He has had several revision lateral meniscectomies, but I do not think that procedure changes the physical impairment any.

Claimant petitioned for a second opinion and respondents were agreeable, as long as the Workers’ Compensation Commission chose the physician. The Commission chose Dr. Kenneth Martin. Dr. Martin reviewed all of claimant’s charts, x-rays, and MRIs, including Dr. Mulhollan’s. He also personally tested claimant’s lower extremity and found him to have moderate cruciate or collateral ligament laxity and, based on this research, personal examination, and the AMA Fourth Edition Guides, determined that claimant had a 17 percent permanent partial disability to the lower extremity, or 7 percent to the whole person. Dr. Martin opined that claimant did have arthritis but that it was “post traumatic” to his work injury of October 15, 1999, when he was “hit on the lateral side of the knee and sustained a valgus injury during a football game.” He stated:

The problem with the knee now is a *result of his initial injury*. This is a *normal sequelae* of a torn lateral meniscus with subsequent degeneration due to the combination of the injury to the meniscus and injury to the articular surface of the femur.

[Emphasis added.] He further recommended a brace that was not furnished by respondents. Respondents have controverted claimant's entitlement to any impairment rating.

Claimant testified in his deposition that he had had no prior problems with his knee before this work-related injury and that his physical activities were not restricted before the injury. He testified that now, as a result of this injury, he has to be very careful on player interaction and physical activity. He testified that he has trouble standing for prolonged periods of times and while his knee does not "lock up" on him, it does "creak and pop" and he can feel it doing so.

FINDINGS OF FACT

1. The stipulations agreed to by the parties herein are accepted as fact;
2. Claimant has proven by a preponderance of the evidence that his compensable injury of October 1999 was the major cause of his disability or impairment;
3. Claimant is entitled to the 17 percent impairment rating issued to him by Dr. Kenneth Martin;
4. Respondents have controverted claimant's entitlement to any impairment rating.

DISCUSSION

In determining whether claimant is eligible for permanent benefits, Ark. Code Ann. § 11-9-102(4)(F)(ii) (Supp. 2003), must be applied, which provides:

(ii) (a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment.

(b) If any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need for treatment.

“Major cause” is defined as more than fifty percent of the cause, and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. § 11-9-102(14).

In this case, there was no evidence that claimant had had prior problems with his right knee prior to his compensable injury of October 15, 1999. He testified in his deposition that he had had no prior problems and that he now, as a result of this injury, has to be real careful on player interaction and physical activity. He testified that he has trouble standing for prolonged periods of times and while his knee does not “lock up” on him, it does “creak and pop” and he can feel it doing so.

While there was conflicting medical evidence in this case, it is well settled that it is the Commission's duty to resolve such conflicts. *See Inskip v. Emerson Elec. Co.*, 64 Ark. App. 101, 983 S.W.2d 132 (1998); *Chamberlain Group v. Rios*, 45 Ark.

App. 144, 871 S.W.2d 595 (1994). Dr. Martin not only reviewed all of claimant's prior tests, x-rays, MRIs, and records, including those of Dr. Mulhollan, but he also examined claimant himself. While it is true that medical opinions addressing permanent impairment must be stated within a reasonable degree of medical certainty, Dr. Martin's opinion met this requirement in that he was not equivocal in his assessment of claimant's permanent impairment. Further, his impairment rating was based on the AMA 4th Edition Guides and the Commission has decreed that said Guides should be used with objective findings to arrive at a consistent permanent disability rating.

In short, the medical records of the three surgeries, along with the claimant's testimony regarding his limitations and restrictions, and Dr. Martin's opinion, establish claimant's disability. As such, in this examiner's opinion, claimant has proven entitlement to the 17 percent permanent impairment rating issued by Dr. Martin.

AWARD

Respondents are directed to pay the claimant permanent partial disability benefits in accordance with the findings of fact above.

Respondents are directed to pay the claimant's attorney, Mr. Mike Etoch, Jr., the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge