

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F208060

RAY MCGLUMPHY, Employee	CLAIMANT
ROMAC ELECTRIC, Employer	RESPONDENT
UNION STANDARD INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED FEBRUARY 24, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 9, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 8, 2004, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his right knee on July 11, 2002.

At the pre-hearing conference the parties agreed to litigate the following issue:

1. Claimant's entitlement to continued medical treatment with the Ozark Orthopaedic Clinic and payment of outstanding medical from Ozark Orthopaedic and HealthSouth Physical Therapy.

At the time of the hearing the parties agreed that payment of medical treatment from HealthSouth was no longer an issue. The parties also agreed that respondent has paid

for medical benefits from Ozark Orthopaedic Clinic through December 2002, but not for any subsequent medical treatment.

The claimant contends that he is entitled to additional medical treatment from Ozark Orthopaedic as well as payment of outstanding medical treatment from Ozark Orthopaedic incurred in 2003 and 2004.

Respondent contends that claimant is not entitled to any additional medical treatment for his compensable injury subsequent to December 2002.

From a review of 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on December 8, 2004, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to any additional medical treatment for his July 2002 compensable injury subsequent to December 2002.

FACTUAL BACKGROUND

The claimant has a history of problems with his right knee. At a prior hearing claimant admitted that he had problems with his right knee swelling up a dozen times or more within a six month period of time prior to March 8, 2000. On March 8, 2000, the claimant suffered a compensable injury to his right knee while working for Cornerstone Home Services. Claimant's primary treating physician for that compensable injury was Dr.

Mitchell. Dr. Mitchell performed an arthroscopic procedure on claimant's right knee in April 2000 and eventually released claimant to return to work with a four percent impairment rating. The workers' compensation carrier for Cornerstone Home Services accepted the March 8, 2000 injury as compensable and paid compensation benefits, including the impairment rating.

Following his release to return to work claimant developed additional problems with his right knee and underwent a second surgical procedure which was performed by Dr. Mitchell on January 16, 2001. Claimant was also evaluated by Dr. Harris in May 2001. The workers' compensation carrier for Cornerstone did not accept claimant's additional knee problems as compensable. As a result, claimant filed a claim with the Commission contending that his additional knee problems and second surgical procedure were causally related to the original injury of March 8, 2000. Following a hearing, Administrative Law Judge Michael Ellig filed an opinion on June 13, 2001, finding that claimant's knee problems beginning in December 2000 were not causally related to the right knee injury of March 8, 2000. This opinion was subsequently affirmed and adopted by the Full Commission on May 28, 2002.

Claimant eventually became employed by the respondent and suffered a compensable injury to his right knee on July 11, 2002. On that day the claimant was walking across boards which had been laid across a ditch when one of the boards moved, causing claimant to fall and injure his right knee. The claimant sought medical treatment from the emergency room at Washington Regional Medical Center on July 11, 2002. X-rays were taken that day which revealed no fracture, dislocation, or joint effusion. Claimant was given a knee immobilizer, prescribed medication, and taken off work for four days. Claimant returned to the emergency room on July 15, 2002 where his condition was diagnosed as a knee sprain/strain. Claimant was advised to follow up with the respondent's company physician. Claimant was sent by respondent to Dr. Abernathy on

July 25, 2002, and his report of that date refers claimant to Dr. Harris. The claimant was evaluated by Dr. Harris on August 7, 2002. Dr. Harris' report of that date notes that claimant's x-rays were normal and that some swelling was present in claimant's right knee. Dr. Harris ordered an MRI scan and indicated that he believed the claimant suffered from a medial collateral sprain or strain. According to Dr. Harris' report of August 21, 2002, the MRI scan revealed swelling and atrophy of claimant's quad. Dr. Harris opined that surgery was not necessary, but instead recommended physical therapy, medication, and no work. On December 17, 2002, Dr. Harris noted that claimant had done well with his knee and released him to full activity with no physical impairment.

The respondent accepted claimant's right knee injury as compensable and paid compensation benefits through the date of Dr. Harris' evaluation of December 17, 2002. Subsequent to that evaluation, claimant sought medical treatment from Dr. Harris on October 23, 2003, and again on August 2, 2004. Respondent has denied liability for any compensation benefits subsequent to December 17, 2002. As a result, claimant filed this claim contending that respondent is liable for payment of Dr. Harris' medical treatment subsequent to December 17, 2002, as well as continued medical treatment.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for treatment of his compensable knee injury of July 11, 2002. After my review of the evidence, I find that claimant has failed to meet that burden of proof.

First, as previously noted, the claimant has an extensive history of right knee problems. According to claimant's testimony at the hearing on April 30, 2001, within a six month period of time prior to his first work-related injury, the claimant had swelling present in his right knee on at least a dozen occasions. Claimant subsequently suffered a

compensable injury while working for Cornerstone Construction on March 8, 2000, and underwent an arthroscopic procedure in April 2000. Claimant subsequently developed additional right knee problems which were found by the Commission not to be related to claimant's original compensable injury. The last medical report of record prior to claimant's most recent injury in July 2002 was the report of Dr. Harris dated May 8, 2001, indicating that claimant continues to have problems with his right knee. As a result of claimant's continued complaints, Dr. Harris ordered medication to alleviate swelling and ordered physical therapy three times each week.

Despite those pre-existing problems, claimant did in fact have a new injury while working for the respondent on July 7, 2002. However, the medical records indicate that claimant's injury was a knee sprain/strain which had resolved as of December 17, 2002. As previously noted, x-rays taken in the emergency room on July 11, 2002 revealed no fracture, dislocation, or joint effusion. Following treatment at the emergency room and a one-time visit with Dr. Abernathy, claimant was again evaluated by Dr. Harris. Dr. Harris' report of August 7, 2002 indicates that while some swelling was present, claimant's x-rays were normal. It was his opinion that claimant had suffered only a knee sprain/strain. Dr. Harris did order an MRI scan which revealed swelling and atrophy of claimant's quadriceps. However, Dr. Harris was of the opinion that no surgery was necessary; instead, he prescribed physical therapy and took claimant off work. Claimant was next evaluated by Dr. Harris on September 11, 2002 and he noted that claimant had no swelling. He indicated that he still believed the claimant had a medial collateral sprain or strain. Dr. Harris continued claimant's physical therapy and continued claimant's off-work status.

On November 4, 2002, Dr. Harris noted that claimant had an aching pain in his knee after cutting wood. However, Dr. Harris noted that no swelling was present. Dr. Harris stated that claimant could return to work as of November 7, 2002, and recommended that claimant return in six weeks for a final evaluation.

On December 17, 2002, Dr. Harris noted that other than having some pain and swelling after going hunting, the claimant "has done well with his knee." Dr. Harris released the claimant to full activity with no physical impairment. Following claimant's release claimant eventually became employed for Twin City Electric, remodeling Wal-Mart stores. This job requires various physical activities including the climbing of ladders. Claimant testified that climbing ladders causes additional problems with his right knee.

Claimant did not seek any additional medical treatment for his right knee until October 23, 2003, more than ten months after he had been released by Dr. Harris. Dr. Harris' medical report of that date indicates that claimant has good days and bad days and that climbing ladders causes claimant difficulty. Dr. Harris noted that x-rays taken that day revealed no change in claimant's knee condition. Following that evaluation claimant did not return to Dr. Harris for additional medical treatment until August 2, 2004, at which time he noted that claimant had aching in his right knee with weather changes. Again, Dr. Harris noted that x-rays revealed no change from claimant's previous condition and indicated that claimant could perform full activity.

Given the foregoing evidence, I find that claimant has simply failed to prove by a preponderance of the evidence that any knee problems subsequent to December 2002 are causally related to his compensable injury of July 11, 2002. As previously noted, claimant had an extensive history of pre-existing right knee problems. While claimant did have a compensable injury to his right knee while working for respondent, that injury was diagnosed as a knee sprain/strain which had resolved as of December 17, 2002, when Dr. Harris released claimant to full duty with no physical impairment. After that evaluation claimant did not seek any additional medical treatment relating to his right knee until October 23, 2003, some ten months later. The preponderance of the evidence does not support a finding that the visit with Dr. Harris in October 2003 nor the subsequent visit in August 2004 are causally related to the injury of July 7, 2002, as opposed to claimant's

pre-existing knee condition.

In summary, claimant has the burden of proving by a preponderance of the evidence that his knee problems subsequent to December 17, 2002, are causally related to his compensable injury of July 11, 2002. I find that claimant has failed to meet his burden of proving a causal connection by a preponderance of the evidence.

ORDER

Claimant has failed to prove by a preponderance of the evidence that his knee problems subsequent to December 2002 are causally related to his compensable injury of July 11, 2002. Therefore, his claim for additional compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE