

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F306416

PATRICIA NIEVES	CLAIMANT
PETERSON FARMS, INC.	RESPONDENT
COMPCARE ADMINISTRATORS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 13, 2005

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

This matter was remanded on May 11, 2005, for a translation of the claimant's contentions as it pertained to her description of her injury. Upon remand, Anne Yancey, a certified Spanish English Court Interpreter was contacted and has subsequently provided in writing a translation of the part of the claimant's contentions which were written in Spanish. See attached document Exhibit 1.

A hearing was held on November 2, 2004, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on September 17, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On June 21, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her left knee on June 21, 2002.

4. Medical expenses have been paid.

By agreement of the parties the issues to litigate are limited to the following:

1. Temporary total disability from June 21, 2002, to a date to be determined.

2. Attorney's fees.

In regard to the foregoing issues the claimant contends that she was injured on June 14, 2002, when she hurt her left knee, ankle, and back. Her injury occurred as follows: coming down the ladder, I tripped on a metal drain cover and fell, and hit the left foot, knee and ankle.

In regard to the foregoing issues the respondents contend that based on the present medical evidence the claimant is not entitled to any TTD. The respondents provided work to the claimant within her restrictions. The claimant was not working for the respondent due to her maternity leave. The respondents contend that they have paid all medical expenses to or on behalf of the claimant. If the claimant is requesting a change of physician, the respondents have no objection. However, the respondents are a member of an MCO and,

therefore, contend that the selection of an orthopedic surgeon must come from their approved physician list.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical records marked Claimant's Exhibit No. 1 and a letter marked Claimant's Exhibit No. 2. The respondents submitted medical records marked Respondents' Exhibit No. 1, two letters, one marked Respondents' Exhibit No. 2 and one marked Respondents' Exhibit No. 3, attendance records marked Respondents' Exhibit No. 4 and additional attendance records for the year 2003 marked Respondents' Exhibit No. 5. All these exhibits were admitted without objection.

DISCUSSION

It has been stipulated by the parties and the claimant testified that she sustained a compensable injury while working for the respondent on June 21, 2002. The claimant testified that the respondents send her to the doctor a few days after her fall. The claimant testified that the doctor recommended that she put ice on her knee, gave her an ankle brace as well as medication. The claimant testified that although she continued to have pain, discomfort and problems with her knee, she continued to work at her regular job for several months. The claimant testified that she would go to the nurse with her problems but that the nurse did not seem particularly sympathetic. The claimant testified that she continued working for the respondent until problems developed with her pregnancy. The claimant testified as her pregnancy advanced

and she gained weight due to the baby it put more pressure on her leg which made it harder for her to get around.

The claimant testified that she had surgery in March 2004 which improved the condition of her knee. The claimant testified that she thinks that she would be able to work but due to other medical problems she was supposed to undergo additional testing. The claimant testified that she feels a whole lot better compared to the way she felt before her surgery. The claimant testified that it was about four months after the surgery that she was really able to stretch her leg out completely.

On cross examination, the claimant testified that from the date of her injury on June 21, 2002, up until she took off work for her pregnancy she did miss some time off work but does not know how many days. The claimant agreed that she talked with Lorena white concerning her leave due to her pregnancy. The claimant also agreed that she wrote a letter to Ms. white concerning her leave on June 11, 2003, (see Respondents' Exhibit No. 2). The claimant agreed that she received a letter from the respondent dated June 17, 2003, (see Respondents' Exhibit No. 3) addressing the questions which she had set forth in her earlier letter.

On redirect examination, the claimant testified that she took off three months which is the respondents' standard leave when a person is pregnant before she had her baby rather than taking it after her baby was delivered.

Lorena white was called to testify on behalf of the respondents. Mr. white stated that she worked for the respondent

in personnel. The claimant testified that she does not get involved at all in the workers' compensation claims. Ms. White testified that she did get involved with the claimant's case after she received a letter from the claimant's doctor indicating that she needed to be off work due to pre-term labor. Ms. White was asked to review the claimant's attendance records for the year 2002. Ms. White indicated that following the claimant's injury on June 21, 2002, she did not miss any time from work during the month of July and in the month of August she took one vacation day. Ms. White testified that the claimant did not have any time off in September and in October she took five days of vacation. Ms. White testified that the claimant was absent from work on the 29th of October but did not miss any time from work in November and only had two late appearances and one absence during the month of December. Ms. White reviewed the claimant's attendance reports for 2003, noting that the claimant first took her leave of absence due to her pregnancy on March 17, 2003. Ms. White testified that when the claimant returned to work she worked for approximately one week and then came in with a note indicating that she needed to be off, at which time the family medical leave act was explained to the claimant. The claimant was informed that she had the right to twelve weeks of FMLA which she could use before or after her pregnancy. Ms. White testified that the respondent had work available for the claimant but that after her maternity leave the claimant never came and requested her job back.

Phillip Goff testified that he was director of human resources for the respondent and was in that position in 2002 and 2003. Mr. Goff testified that Lorena White reports to him and that he also does not get involved in workers' compensation cases on a daily basis. Mr. Goff then testified that the respondents have a policy of providing restricted duty work for their injured employees. Mr. Goff testified that he became involved with the claimant's case after he received a letter from her (see Respondents' Exhibit No. 2). This witness testified that in response to the claimant's letter he authored a letter dated June 17, 2003, to the claimant (see Respondents' Exhibit No. 3). This witness testified that the claimant has been terminated by the respondent, noting that once she used up all of her FMLA and her attendance points, the company's policy is such that an individual would be terminated. Mr. Goff testified that these findings are set forth in his letter to the claimant. Mr. Goff testified that in the claimant's case the respondent was willing to waive a waiting period for rehire if she would come back in and reapply for employment. Mr. Goff testified that, to his knowledge, the claimant has never contacted anyone at the respondent's business to come back to work and that they have work available for her. This witness testified that if the claimant had some type of restrictions, they would accommodate these restrictions.

On redirect examination, Mr. Goff testified that he was familiar with the attendance reports. This witness testified that if on the calendars a date is left blank it means that the employee

has reported for work. This witness agreed that notations made on the dates indicate absences, being tardy or something out of the ordinary.

The medical records set forth that the claimant was seen at the Arkansas Occupational Health Clinic by Max Beasley on June 26, 2002, reporting an accident of June 21, 2002, when she tripped over a drain, fell and hurt her left knee. The claimant was instructed to apply moist heat to her knee, prescribed medications and released to return to work to avoid kneeling and climbing stairs or ladders. The claimant was seen again at the Arkansas Occupational Health Clinic on July 1, 2002, where she stated that she was a little better. The claimant was instructed to avoid kneeling and climbing stairs or ladders and she was given an ankle splint. On July 8, 2002, Max Beasley writes that the claimant states that over the past week she has continued to improve moderately, although she still has some swelling over her left knee. The claimant was instructed to continue to apply moist heat, continue her medications and to continue with her present restrictions. On July 22, 2002, Mr. Beasley writes that the claimant continues to improve although she still has pain in her left knee only with prolonged standing. The claimant was instructed to continue her moist heat and she may return to her usual job without restrictions. The claimant reports on August 22, 2002, to Dr. Russell Green that her symptoms are slowly resolving but that standing all day in one place makes her knee sore. Dr. Green recommended that the claimant do some walking after she gets off work. The doctor writes that he

does not think that there is any serious pathology going on with the claimant and she was released from further care with no anticipated long term problems.

The claimant was seen by Dr. Christopher Arnold on October 23, 2003, for her compensable left knee injury. After taking the claimant's history and conducting an examination, the doctor recommended an exercise program before further testing. Dr. Arnold further writes that he thinks the claimant is fine to work but she is to avoid kneeling and climbing of stairs or ladders. Dr. Arnold writes to the claimant's attorney on April 21, 2004, indicating that the claimant had a chondroplasty of the patella and medial femoral condyle. Dr. Arnold writes that he feels that this is directly related to her injury at work. The doctor writes that it has been difficult for the claimant to have any gainful employment from the time of her injury until the time of her surgical procedure and that he anticipates a good recovery with six to eight weeks off from the time of her surgical procedure. Dr. Arnold writes again on August 1, 2004, that the claimant is a patient of his who had a work related injury with a subsequent chondroplasty of the patella and that, in his opinion, this particular injury was directly related to her work accident.

After a complete review of this case, I find that the claimant has failed to prove that she is entitled to temporary total disability from the date of her compensable injury on June 21, 2002, to a date to be determined. The claimant is, however, entitled to temporary total disability during her healing period

following her left knee surgery. Dr. Arnold has indicated that her healing period subsequent to her surgery would be a six to eight-week period of time. Therefore, I find that the claimant is entitled to an eight-week period of temporary total disability following her knee surgery. The testimony has been and the records reflect that the claimant continued to work following her compensable injury up until she took off due to difficulties with her pregnancy. The claimant's request for medical leave indicated that it was due to her pregnancy and not due to her compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On June 21, 2002, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her left knee on June 21, 2002.

4. Medical expenses have been paid.

5. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability for a seven week period of time following her compensable knee surgery. (See discussion above.)

6. The respondents have controverted this claimant's entitlement to temporary total disability.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability for an eight-week period of time following her compensable knee surgery. Therefore, the respondents shall pay this claimant eight weeks of temporary total disability.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE