

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403942

SUSIE A. NOWLIN, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, INC., SELF-INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., TPA	RESPONDENT

OPINION FILED JANUARY 26, 2005

Hearing before Administrative Law Judge J. Mark White on December 16, 2004, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Ms. Amy Huffman, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 16, 2004, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on September 20, 2004, with a Prehearing Order entered on September 28, 2004. A copy of the September 28, 2004, 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/self-insured employer

relationship existed at all relevant times, including March 23, 2004; that on March 23, 2004, the claimant sustained compensable injuries to her right foot, right ankle, left foot and head; that the Commission granted the claimant a change of physician to Dr. D'Orsay Bryant on June 9, 2004; and that the claimant earned an average weekly wage of \$297.45, entitling her to a compensation rate of \$198 for total disability benefits and \$154 for permanent partial disability benefits. At the hearing, the parties further stipulated that the claimant was offered light-duty employment by the respondents on or about April 8, 2004, and that the claimant declined the offer of light-duty work.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury to her right knee on March 23, 2004; whether the claimant is entitled to temporary total disability benefits; whether additional medical treatment is reasonably necessary in connection with a compensable injury; and controversion and attorney's fees.

The claimant contends that the medical treatment received to date since the injury, as well as the additional medical treatment being recommended by Dr. D'Orsay Bryant, is reasonable, necessary and related; that she is entitled to temporary total disability benefits from on or about March 23, 2004, to a date yet to be determined; that it was reasonable under the circumstances for her to decline the

respondents' offer of light-duty work; that she remains within her healing period; and that she is entitled to have her attorney's fees paid as permitted by law.

Respondents contend that the claimant sustained compensable injuries to her right foot, right ankle, left foot, and head on March 23, 2004, when a pallet jack ran over her feet, causing her to fall and hit her head; that respondents have accepted these injuries and have paid medical benefits; that the claimant cannot prove an accidental injury, caused by a specific incident and identifiable by time and place of occurrence, which caused internal or external physical harm to the claimant's right knee, arising out of and in the course of her employment, which required medical services or resulted in disability or death, and is established by medical evidence supported by objective findings; that since the claimant's right knee problems are not a compensable injury, she is not entitled to other benefits with respect to the right knee; and in the alternative, that the claimant is not entitled to temporary total disability benefits because she was offered light-duty work by the respondent-employer, which she refused.

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 witnesses and to observe their 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 proven by a preponderance of the evidence that she sustained an injury caused by a specific incident and identifiable by time and place of occurrence; and that her injury arose out of and in the course of her employment.
4. The claimant has proven by a preponderance of the evidence that the existence and extent of her right knee injury is established by medical evidence supported by objective findings; and that she sustained an injury causing internal or external physical harm to the right knee requiring medical services.
5. The claimant has therefore proven by a preponderance of the evidence that she sustained a compensable injury to her right knee.
6. The claimant has failed to prove by a preponderance of the evidence that

additional medical treatment after April 8, 2004, was reasonably necessary in connection with the compensable injury.

7. The claimant has proven by a preponderance of the evidence that she was within her healing period and had not returned to work from March 23, 2004, until April 8, 2004.
8. The claimant has therefore proven by a preponderance of the evidence that she was entitled to temporary total disability benefits from March 23, 2004, until April 8, 2004.
9. The claimant has failed to prove by a preponderance of the evidence that she was within her healing period after April 8, 2004.
10. The claimant has therefore failed to prove by a preponderance of the evidence that she was entitled to temporary total disability benefits after April 8, 2004.
11. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked for the respondent-employer as a grocery stocker. On March 23, 2004, she sustained a compensable injury when a fully-loaded pallet jack ran over her right foot and knocked her to the ground. The claimant testified that when it happened she “twisted my ankle, my foot, my knee, all of it twisted and it made my body where it sponged up and hit the back of my head and I bounced on the concrete.” She testified that immediately afterwards her foot, ankle, leg and knee were all swollen and red. She was unable to walk, and her co-workers assisted her into a wheelchair. She completed paperwork reporting the accident at the scene; a portion of the form completed by another employee includes the notation, “foot swollen, knee swollen, bump on back of head”.

The claimant’s residence is in Farmerville, Louisiana, fifty-four miles from the El Dorado store where she worked. The claimant testified that she was unable to see the company doctor because his office was already closed, and that she decided to drive home and seek treatment at the emergency room in Farmerville. She testified that when she reached the hospital her knee was swollen and bruised. The treatment notes from the emergency room state:

This is a 35-year old female who comes to the emergency room who states that she was at work at

Wal-Mart when a pallet jack and pallet pushed over her right foot and pulled her down to the ground. She hit the back of her head but there was no loss of consciousness. She also complains of pain in her left great toe but her main pain is in her right foot and somewhat in her right knee.

The doctor's exam revealed contusions to the right knee, foot and ankle, but "no significant swelling." The claimant was released with a diagnosis of "status post trauma in the right leg and left toe" and prescribed medication. The next day she returned to El Dorado to follow up with the company doctor, Dr. Greg Smart. He noted no objective findings of injury to the knee but did note restricted range of motion in the knee. He diagnosed her with "right knee pain" and instructed her to remain off of work until she returned for a recheck.

She returned on March 26. Dr. Smart noted, "The knee pain is not better - she cannot bend her knee. She complains of pain mainly of the suprapatellar tendon region." He released her to work with the restriction that she could work only while sitting and referred her to Dr. James Mulhollan.

An MRI exam of the right knee was performed on March 30. The radiologist, Dr. Mark Sateriale, noted "a small effusion" in the knee and then offered these conclusions:

IMPRESSION:

1. No meniscal tear or other acute intra-articular injury appreciated on this examination.

2. Signal changes in and around the medial patellar retinaculum are compatible with either a partial tear or postoperative change.
3. Markedly thickened patellar tendon with prominence of the tibial tubercle. The findings could be on the basis of postsurgical change (patellar translocation?). Alternatively, they may be due to chronic patellar tendonitis (Jumper's knee), associated with chronic hypertrophic changes at the tibial tubercle. Please correlate clinically and with previous surgical history.
4. Small focal osteochondral lesion of the lateral femoral condyle has the appearance of chronic osteonecrosis.
5. Osteoarthritis.

Dr. Mulhollan saw the claimant on March 30 and sent his report to the respondent-employer on April 1. He related the history of the injury as, "Her knee popped. She did not twist it. In her mind, there was immediate swelling." He noted that her "knee was not especially swollen" but that she "declined to bend it from a fully extended position." He concluded, "I am not able to establish any diagnosis besides the fact that she has an injured extremity, a contusion, a sprain or some sort of nonsurgical derangement." He released her to return to regular-duty work as of April 8, though he noted that she would need crutches "for a few days." The respondents offered the claimant a light-duty position which she declined. She testified that she was unable to return to work because of the pain and swelling of her injury, because of the fact that Dr. Mulhollan had given her no additional pain

medication, and because of the long drive between her home and the respondent-employer.

Because of her continued pain and lack of pain medicine, she sought treatment at her local emergency room again on April 8. The emergency room physician noted complaints of pain in the lower leg to the ankle, but he checked boxes labeled "nml inspection," "nml ROM" and "non-tender" as to the knee. He diagnosed an ankle sprain/strain and made no diagnosis as to the knee. The claimant was prescribed medication, instructed to continue her knee brace and crutches, and released. She testified that the medication did give her some relief for the next two weeks.

The claimant requested a change of physician which was finally granted by the Commission on June 9 to Dr. D'Orsay Bryant. She did not return to work in the interim, as she was waiting for the Commission's decision. She testified that she continued to have pain and swelling in her knee throughout the interim.

She first saw Dr. Bryant on June 17. He recorded the claimant as saying her knee "popped out" at the time of her injury. He also noted that the claimant was apparently unable to move her knee and that she complained of her knee catching and locking. He described his physical examination as follows:

Regarding the right lower extremity, the patient is wearing a brace that is worn out. She has healed

superficial abrasions over the anterior proximal tibia. Range of motion is from 0-45°. She has severe tenderness at the medial and lateral joint lines. She has patellofemoral crepitus with severe compression and soft tissue pain in the medial and lateral retinaculum. She has a healed longitudinal scar overlying the anterior aspect of the knee. It starts from the patella extending distally over the patella tendon. Lachman and AP drawer examination is negative, though the patient is guarding. She has soft tissue swelling of the knee. The ankle reveals healed medial and lateral surgical scars. She has tenderness at the medial and lateral ligaments. Range of motion is from 0-30°. Skin and neurovascular status intact.

Dr. Bryant diagnosed “right knee traumatic injury with patellofemoral chondrosis with possible meniscal tear” and “right knee osteochondral lesion.” He recommended medication, physical therapy, and a new knee brace. The claimant returned on July 15 complaining of continued pain and swelling. Dr. Bryant noted full range of motion in the right knee.

The respondents denied Dr. Bryant’s recommendations and controverted further treatment. Though the respondents agree the claimant injured her right foot and ankle in this accident, they deny that she injured her right knee. The claimant acknowledged that she has had problems with her right knee in the past, having twice had surgery on it – in 1987 and again in 1994. She testified, though, that after her 1994 surgery she had no problems with her knee until the work incident of March 23, 2004.

In August, the respondents sought the opinions of the claimant's physicians as to the nature and cause of her knee complaints. Dr. Mulhollan responded in an August 19 letter that he could not determine whether the claimant had an effusion in her knee. He stated that Dr. Sateriale "failed to comment on the presence of an effusion, which he does invariably." However, Dr. Sateriale's report of March 30 does in fact note "a small effusion." Dr. Mulhollan opined that the claimant's MRI findings all pre-existed the alleged work injury. Presumably this opinion does not include the effusion noted in the knee, for Dr. Mulhollan was under the mistaken impression that no effusion was noted.

In an August 30 letter, Dr. Sateriale likewise opined that the "impressions" contained within his MRI report all pre-existed the alleged work injury. But Dr. Sateriale offered no opinion as to the significance, if any, of the "small effusion" he noted.

Dr. Bryant responded on September 7. He noted that the claimant's knee was swollen, but that he saw no effusion. As to the MRI findings, he opined:

The majority of the MRI findings are related to the patient's [prior] knee surgery, but the MRI is nonspecific for cartilaginous injuries. Also, meniscal tears can be missed by MRI. The MRI is only a diagnostic tool, but it's not 100 percent accurate. For instance, the patient does have severe cartilage damage in the kneecap region, yet the MRI says nothing concerning this. Moreover, the patient does have an

osteochondral lesion in the lateral femoral condyle (Impression 4) on the MRI report. An osteochondral lesion could cause the patient's symptoms of catching and locking in the knee. Moreover, the patient could have had a chronic injury in that region, yet can have an acute injury superimposed upon that painful joint surface. The MRI is very unspecific for cartilaginous regions. This has been confirmed in the literature. The MRI only takes slices through the knee, yet the slices that the MRI takes through the knee do not coincide with the exact location of the lesion; then that lesion is missed. The MRI is not a panacea. Actual visualization of the injury is more specific than a radiographic picture.

Dr. Bryant went on to say that he thought the claimant's work injury resulted in an acute injury superimposed over the pre-existing chronic injury. He noted that the osteochondral lesion was not observed by Dr. Giller, who directly visualized the knee when he performed the claimant's 1994 knee surgery. Because Dr. Giller did not observe these defects when he performed surgery, Dr. Bryant concluded, they cannot be attributed to the 1994 injury. In a November 30 letter, Dr. Bryant further concluded that the claimant's work injury "did result in the symptomatology currently being experienced by the patient," based on the fact that the claimant had no symptoms prior to the work injury.

II. Adjudication

A. Compensability

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

The claimant's testimony, with that of her co-workers, is sufficient to prove by a preponderance of the evidence that the claimant sustained an injury caused by a specific incident and identifiable by time and place of occurrence; and that her injury arose out of and in the course of her employment.

The record contains a number of objective findings supporting the existence of an injury to the knee, the two most persuasive of which are the radiologist's notation of a "small effusion" in the knee based on an MRI exam, and Dr. Bryant's observation of swelling in the knee. I note that Dr. Bryant's observation was some months after the alleged injury, but it is consistent both with an observation of knee swelling noted on the original report of injury completed by the respondents' employees, and with Dr. Mulhollan's evident observation of swelling (though he did not think it significant). Notably, the initial emergency room note also states that a physical exam "reveal[ed] a contusion to the right knee," strongly suggesting that the doctor visually observed a contusion or bruise. Given this evidence, I find that the claimant has proven by a preponderance of the evidence that the existence and extent of her right knee injury is established by medical evidence supported by objective findings; and that she sustained an injury causing internal or external physical harm to the right knee requiring medical services. The claimant has proven every element of compensability; therefore, I find that she has proven by a preponderance of the evidence that she sustained a compensable injury to her right knee on March 23, 2004.

B. Medical Benefits and Healing Period

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).

There appears to be little or no dispute that the medical treatment received by the claimant through her April 8, 2004, emergency room visit was reasonably necessary in connection with her compensable injury. After this visit, however, her treatment appeared to be confined to her right knee.

At the hearing, the claimant testified that she “twisted” her knee when the pallet jack ran over her foot. However, Dr. Mulhollan recorded that the claimant denied twisting her knee, that it instead “popped.” She likewise told Dr. Bryant that her knee “popped.” Dr. Bryant opined that the claimant’s current complaints are related to the compensable injury, and he speculated that the claimant might have sustained a meniscal tear. Dr. Mulhollan and Dr. Sateriale conversely opined that none of the claimant’s objective signs of injury were related to the compensable injury.

I find it significant that the notes from the claimant’s visit to the emergency

room on April 8 reflect no knee complaints. The ER physician marked the claimant's chief complaint as her right ankle and made no notation of pain or complaints in the knee. He specifically noted that his inspection of the knee was normal, that the claimant had normal range of motion in the knee, and that her knee was non-tender. The ER nurse did mention the knee, but I understood her notation to mean that the claimant's lower leg was red and painful from the ankle to the knee, not that the claimant was having pain specifically in the knee itself. Finally, I note that when the claimant saw Dr. Bryant in June, several months after her compensable injury, he noted crepitus, catching and locking in the knee – none of which were noted by any prior physician.

Given these facts, I must find that the claimant has failed to prove by a preponderance of the evidence that additional medical treatment after April 8, 2004, was reasonably necessary in connection with the compensable injury.

C. Temporary Total Disability Benefits

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during her healing period or until she 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 her injury will permit, and there is nothing further in the way of treatment that will improve her condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The claimant stopped working on March 23, 2004, the day of her injury, and did not return to work. As noted above, I find that the claimant's medical treatment through April 8, 2004, was reasonably necessary. Therefore, I find that the claimant has proven by a preponderance of the evidence that she was within her healing period and had not returned to work from March 23, 2004, until April 8, 2004. I conclude that the claimant has proven by a preponderance of the evidence that she was entitled to temporary total disability benefits from March 23, 2004, until April 8, 2004.

However, given that the claimant's treatment after April 8, 2004, was not reasonably necessary, I must find that the claimant has failed to prove by a preponderance of the evidence that she was within her healing period after April 8, 2004. Therefore, I conclude that the claimant has failed to prove by a preponderance of the evidence that she was entitled to temporary total disability benefits after April 8, 2004.

Because I so find, and because the claimant was not offered light-duty work

until April 8, 2004, the question of whether her refusal to return to work was reasonable is moot.

AWARD

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right knee, and that she was entitled to reasonably necessary medical treatment and temporary total disability benefits from March 23, 2004, until April 8, 2004. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

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 Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge