

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503172

JOAN L. PHILLIPS, EMPLOYEE	CLAIMANT
ARAMARK CAMPUS, INC., EMPLOYER	RESPONDENT
INDEMNITY INS. CO. OF NORTH AMERICA, CARRIER	RESPONDENT

OPINION FILED JULY 11, 2005

Hearing before Administrative Law Judge J. Mark White on June 9, 2005, in Texarkana, Miller County, Arkansas.

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

Respondents represented by Mr. Randy Murphy, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 9, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on May 9, 2005, and a Prehearing Order was entered that same day. A copy of the May 9, 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 January 24, 2005; that the respondents provided medical treatment on March 10 and March 17, 2005; and that the respondents now controvert this claim in its entirety. At the hearing, the parties further stipulated that the claimant earned an average weekly wage of \$300, entitling her to a compensation rate of \$200 for total disability benefits and \$154 for permanent partial disability benefits.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury; whether the claimant is entitled to temporary disability benefits; whether medical treatment is reasonably necessary in connection with a compensable injury; and controversion and attorney's fees.

The claimant contends that she sustained compensable injuries to both of her knees and her left arm and wrist on or about January 24, 2005; that she is in need of additional medical treatment which is reasonable, necessary, and related to her compensable injuries; that she should be awarded temporary partial disability benefits from March 23, 2005, through May 2, 2005; that prior to the accident, she was working approximately forty hours per week, but following the accident she was only able to work approximately 15 hours a week; that she should be awarded temporary total disability benefits from May 3, 2005, to a date yet to be determined; and that respondents should be ordered to pay attorney's fees as permitted by law.

The respondents contend that the claimant did not sustain an injury within the course and scope of her employment; and that the claimant's condition and problems pre-existed her employment with Aramark and did not arise out of and in the course and scope of her employment.

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 to her right knee caused by a specific incident and identifiable by time and place of occurrence; and that her right knee injury caused internal or external physical harm to the body requiring medical

services.

4. The claimant has proven by a preponderance of the evidence that she sustained an injury to her right knee arising out of and in the course of her employment; and that the existence and extent of her right knee injury is established by medical evidence supported by objective findings.
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 proven by a preponderance of the evidence that the medical treatment she has received to date for her right knee has been reasonably necessary in connection with her compensable injury.
7. The claimant has proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with her compensable right knee injury.
8. The claimant has proven by a preponderance of the evidence that she has been within her healing period and has not returned to work from May 3, 2005, until a date yet to be determined.
9. The claimant has therefore proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 3, 2005, until a date yet to be determined.

10. The claimant has proven by a preponderance of the evidence that her average weekly wage decreased as a result of her compensable injury from March 23, 2005, until May 2, 2005.
11. The respondents have controverted this claim in its entirety.

DISCUSSION

I. History

The claimant worked as a breakfast cook for the respondent-employer. She testified that at 6:10 a.m. on January 24, 2005, she was in the freezer retrieving a box of hashbrowns when she slipped and fell on the icy floor. She fell forward, landed on her knees, and caught her left arm in a nearby rack. She testified that when she emerged from the freezer her arm and both knees were bruised.

Her supervisor, LaRonda Duncan, arrived between 7 and 8 a.m., and the claimant then reported the injury to Duncan. Duncan directed her to the office manager, Michelle Milam, to complete an accident report, which was submitted into evidence herein. Milam offered to send the claimant to the doctor, but the claimant declined, saying, "I told her that I didn't feel like I needed to go because it wasn't anything that was broke or anything like that, it was just bruised."

The claimant testified that over the next few days she was "extremely sore"

and that her knee was popping. On January 27, she saw her family physician, Dr. Cathryn Gonzales, for another injury -- a sprained ankle -- but during that visit she mentioned the fall to Dr. Gonzales: "She is also having pain in both knees secondary to falling on them last week at work. She believes this was secondary to favoring her right foot as well. The knees have not become red, hot, or swollen." The claimant testified that her knees were still bruised at this time, though Dr. Gonzales made no mention of bruising.

The claimant returned to Dr. Gonzales on March 3 and 7 for a chest cold, but the doctor's notes do not mention any problems with the knees. The claimant testified that in the weeks following her initial injury, her right knee "kept popping and locking" and she had "a lot of swelling directly around the kneecap." Her duties had increased during this time, as she was cooking for both breakfast and lunch. At the end of February or beginning of March, she asked Milam for an appointment with the doctor for her knees. As a result, the claimant saw Dr. Patrick Antoon on March 10. X-rays revealed osteoarthritis in the right knee but no fractures. Dr. Antoon drew off fluid from the right knee, and he noted the presence of a small effusion in the right knee. The claimant returned on March 17, at which point Dr. Antoon, noting continued popping and pain in the knee, ordered an MRI and placed the claimant on restricted duty. The respondent-employer made such

work available, but as a result the claimant worked fewer hours than she had prior to being placed on restricted duty.

Before she underwent an MRI exam, the respondents controverted the claim. At the claimant's request, Dr. Gonzales ordered the MRI exam and referred her to a specialist, Dr. Kenneth Gati. The MRI, performed April 13, revealed degenerative changes and minimal fluid in the left knee, and a medial meniscus tear in the right knee. Dr. Gati wrote in a letter to Dr. Gonzales of April 26:

She has evidence as you know by MRI of a medial meniscal tear of the right knee. I believe that this is related to her on-the-job injury. She does have some mild to moderate osteoarthritis, but it is in the lateral compartment and all her pain is over the medial compartment.

Dr. Gati recommended conservative treatment for the left knee and arthroscopic surgery for the right knee, which he performed on May 3. He gave his postoperative diagnosis as "1). Right knee medial meniscus tear. 2). Right knee osteoarthritis. 3). Right knee plica." In his May 17 treatment note, Dr. Gati noted that during surgery he observed "some hemorrhage about the medial meniscus consistent with an acute injury. She also had some hemorrhaging within the ACL consistent with an acute strain to her knee." The claimant reported to Dr. Gati that her pain was gone, though at the hearing she testified that she continued to experience some stiffness in the knee. As of the hearing she was scheduled to return

to Dr. Gati in June.

Two other witnesses testified at the hearing. Nelda Jackson described herself as a friend and co-worker of the claimant, and she testified that on or about January 24, 2005, the claimant told her she had fallen in the freezer and injured her knee. Jackson testified that the claimant was limping at the time, and that she had not noticed any limping prior to the freezer incident.

Michelle Milam, the office manager for the respondent-employer, acknowledged most of the testimony surrounding the incident itself. However, Milam alleged that the claimant told her in December prior to the incident "that she drains the fluid off of her knees herself." Milam later testified:

I don't remember her specifically telling me how she [drained the fluid in her knee]. I just remember very vividly that she said that she drained her own fluid off her knees when they got bad and that she would call her physician and request -- tell them what she had done and that they would prescribe her some antibiotics or something.

The parties submitted into evidence the claimant's medical records going back as far as July 2004, but nothing therein substantiates Milam's allegations. The only mentions I can find of prescriptions for antibiotics relate to an abscessed tooth and a chest cold.

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.*

Based on the testimony of the claimant and the other witnesses, and based on the supporting documentation in the record, I find that the claimant has proven by a preponderance of the evidence that she sustained an injury to her right knee caused by a specific incident and identifiable by time and place of occurrence; and

that her right knee injury caused internal or external physical harm to the body requiring medical services. The only remaining question is one of causation.

It appears undisputed that the claimant most likely already had arthritis in her right knee when she sustained her alleged injury. However, the claimant was treated primarily not for arthritis, but for a meniscal tear. Dr. Gati specifically noted that the claimant's symptoms were attributable to the tear, not the arthritis. Thus, whether the claimant's arthritis was pre-existing matters not. The only other evidence of a pre-existing knee condition is the testimony of Milam that several months prior to the accident the claimant had admitted to drawing fluid off of her knee on her own. I do not find this testimony credible, for I do not find it plausible. It is implausible that the claimant, a cook with no nursing or medical training, would be injecting her own knee to draw off fluid. It is particularly implausible in light of the fact that nothing in the medical record supports or corroborates the allegation – and Milam specifically testified that the claimant claimed to have reported these actions to her doctor and requested prescriptions for antibiotics. If Milam's testimony were correct, one would expect to find corroborating evidence in the claimant's medical records prior to the injury. Milam testified this conversation took place in December 1994, and the parties introduced the claimant's medical records going back some six months prior to the alleged conversation.

The claimant credibly testified that she experienced pain and popping in her knee beginning with the January 2005 incident and continuing into the following months. She sought initial treatment from her doctor a few days later, and treatment from a specialist a few weeks later. Dr. Gati specifically opined that the meniscal tear was connected to the January 2005 work injury, and Dr. Gati noted that during surgery he observed hemorrhaging consistent with an acute injury. Given all this evidence, I find that the claimant has proven by a preponderance of the evidence that she sustained an injury to her right knee arising out of and in the course of her employment; and that the existence and extent of her right knee injury is established by medical evidence supported by objective findings. The claimant has proven every element of compensability; I therefore conclude that she has proven by a preponderance of the evidence that she sustained a compensable injury to her right knee.

Nothing in the record suggests that the treatment provided the claimant for her right knee, including surgery by Dr. Gati, has been *per se* unreasonable. Given this, and given the discussion above, I find that the claimant has proven by a preponderance of the evidence that the medical treatment she has received to date for her right knee has been reasonably necessary in connection with her compensable injury. As of the hearing, the claimant was still treating with Dr. Gati.

I find that the claimant has proven by a preponderance of the evidence that additional medical treatment remains reasonably necessary in connection with her compensable right knee injury.

B. Temporary Disability Benefits

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 has not worked since her May 3 surgery, and she is still undergoing treatment by Dr. Gati. I find that the claimant has proven by a preponderance of the evidence that she has been within her healing period and has not returned to work from May 3, 2005, until a date yet to be determined. I therefore conclude that the claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 3, 2005, until a date yet to

be determined.

An employee is entitled to temporary partial disability benefits when her average weekly wage has decreased as a result of her compensable injury. ARK. CODE ANN. § 11-9-520. The claimant credibly testified that after Dr. Antoon placed her on restricted duty, she was given a light-duty job by the respondent-employer but worked fewer hours than she had before her injury. The record includes Dr. Antoon's note assigning her to restricted duty due to her right knee injury. Given this evidence, I find that the claimant has proven by a preponderance of the evidence that her average weekly wage decreased as a result of her compensable injury from March 23, 2005, until May 2, 2005.

The parties did not introduce specific evidence as to what the claimant's wage loss was in that time, and I am therefore unable to make a specific award of temporary partial disability benefits. However, the parties agreed at the hearing they would make the necessary calculations should I find that the claimant was indeed partially disabled.

AWARD

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right knee; that medical treatment has been

and remains reasonably necessary in connection with the compensable injury; and that she is entitled to temporary total disability benefits from May 3, 2005, until a date yet to be determined. 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