

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F503658

CHRISTY PHIPPS, Employee	CLAIMANT
ISRAEL ENTERPRISES LLC, Employer	RESPONDENT
COREGIS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED DECEMBER 22, 2005

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

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On November 30, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 22, 2005, 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 on January 1, 2005.
3. The claimant was earning an average weekly wage of \$460.00 which would entitle her to temporary total disability benefits at the rate of \$307.00 per week.
4. Respondent has controverted this claim in its entirety.

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

1. Compensability.
2. Temporary total disability benefits.

3. Medical.
4. Attorney fee.

At the time of the hearing the respondent withdrew as an issue her entitlement to temporary total disability benefits.

The claimant's contentions as set forth in her pre-hearing questionnaire are as follows: "Claimant was injured on January 1, 2005. Her left knee was injured when she was running to fix an emergency with the equipment at the bowling alley."

The respondents' contentions as set forth in their pre-hearing questionnaire are as follows: "The respondents contend that the claimant's problems are idiopathic in nature. The claimant was simply walking when her knee gave out. The claimant went to Dr. Berestnev and gave a history that she had simply taken four steps and had an unexpected instability of the knee and it buckled. The claimant has had extensive knee problems in the past on the right knee, and, in fact, has had three surgeries including a surgery for a patellar femoral syndrome. The claimant had a MRI for this knee problem which essentially showed a normal examination except for some small effusion. The claimant then went to Dr. Sites who is an orthopaedic surgeon. Dr. Sites noted that the claimant was very sensitive on the examination and was more sensitive than he would expect with the type of injury she had. His diagnosis was a possible left patellar syndrome. Dr. Sites indicated the claimant could continue to work regular duty. The respondents further contend that the claimant's left patellar syndrome is not related to her employment, but is related to an idiopathic condition and degenerative changes."

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 June 22, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee while employed by the respondent.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left knee injury.

### FACTUAL BACKGROUND

The claimant was initially hired by the respondent as an assistant manager of a bowling alley it operated. Claimant was eventually promoted to general manager of the bowling alley and her duties included the supervision and overseeing of bowling equipment and personnel, ordering of supplies, and the general day-to-day operation of the bowling alley.

The claimant has a prior history of problems with both of her knees. Claimant testified that she developed right knee problems in 1991 which resulted in two knee surgeries. More recently, the claimant suffered an injury to her left knee in 2002 which resulted in surgery performed by Dr. Tomlinson on September 5, 2002. Claimant was last seen by Dr. Tomlinson when he released her from his care in November 2002.

Claimant testified that on January 1, 2005 she was standing at a counter talking to one of her employees when she heard a loud bang as if a bowling ball had hit the rake arm on one of the machines. Claimant testified that when she heard that sound she began running toward Lane 2 where there had been a prior problem and after approximately four steps her knee buckled and she heard a pop. Claimant testified that she caught herself on the pool table and had another employee get her a chair and a bag of ice for her knee.

After sitting there for approximately 30 minutes the claimant's husband came and picked her up from the bowling alley.

Claimant testified that this incident occurred on either Friday or Saturday, and that on Monday she reported the incident to the respondent. Jane Rich in the respondent's human resources department made an appointment for the claimant to be evaluated by Max Beasley, a nurse practitioner.

Claimant was evaluated by Max Beasley on January 5, 2005, with a chief complaint of left knee pain. Beasley ordered x-rays which revealed no fractures or dislocations and assessed claimant's condition as left knee pain. Beasley prescribed moist heat twice daily, an ACE wrap, exercises, and medication. Claimant was next evaluated by Beasley on January 12, 2005 at which time she reported no improvement in her knee condition. As a result, Beasley ordered an MRI scan and a change in claimant's medication. The MRI scan of the claimant's left knee was performed on January 21, 2005 and revealed no abnormality other than some minimal effusion in the left knee area. Subsequent to the MRI scan Beasley ordered physical therapy and indicated that if claimant did not improve he would send her to an orthopaedist for further evaluation.

Beasley's medical records indicate that although the physical therapy improved claimant's condition somewhat, she still continued to have significant pain. As a result, Beasley referred claimant to Dr. Sites for a further evaluation. Claimant was evaluated by Dr. Sites on February 24, 2005, at which time she was given a cortisone injection. Dr. Sites also indicated that claimant's condition might require additional arthroscopy if she did not improve. It was Dr. Sites' impression that claimant suffered from a left patellofemoral pain syndrome with acute exacerbation.

Dr. Sites' next medical report is dated March 17, 2005 at which time he noted that claimant had not improved from the cortisone injection. He noted that claimant might have a chondral injury and/or scar tissue from her recent work injury. Dr. Sites noted that these

types of injuries are not always well diagnosed by MRI scans. Dr. Sites in his medical report noted that claimant wished to proceed with left knee arthroscopy. Claimant did not undergo the arthroscopic procedure because it was denied by the respondent.

On August 9, 2005 claimant on her own sought medical treatment from Dr. Arnold, an orthopaedic surgeon, who also indicated that claimant should undergo an arthroscopic procedure.

Claimant has filed this claim contending that she suffered a compensable injury to her left knee while employed by the respondent. She seeks payment of medical treatment associated with her compensable injury.

### ADJUDICATION

Claimant's claim is for a specific injury identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his 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 injury;
- (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.

In order for claimant to prove that she suffered a compensable injury she has the burden of proving by a preponderance of the evidence that her injury arose out of and in

the course of her employment. Respondent contends that claimant's injury did not arise out of and in the course of her employment because her injury was idiopathic in nature. An idiopathic injury is one whose cause is personal in nature or peculiar to the individual. Because idiopathic injuries are not related to employment they are generally not compensable unless conditions related to the employment contribute to the risk of injury or aggravate an injury. *Swaim v. Wal-Mart Associates, Inc.*, \_\_\_\_ Ark. App. \_\_\_\_, \_\_\_\_ S.W. 3d \_\_\_\_ (May 25, 2005); *Kuhn v. Majestic Hotel*, 324 Ark. 21, 918 S.W. 2d 158 (1996); *Crawford v. Single Source Transportation*, \_\_\_\_ Ark. App. \_\_\_\_, \_\_\_\_ S.W. 3d \_\_\_\_ (June 30, 2004).

After viewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant's left knee injury was not idiopathic in nature, but rather that it arose out of and in the course of her employment with the respondent.

The facts in the present claim are similar to the facts presented to the Commission in *Mize v. University of Arkansas for Medical Sciences*, Full Commission Opinion filed May 17, 2001 (E804727). In that particular case the claimant had a long history of degenerative disease in her knees. As the claimant was walking down a hallway and turned to talk to another nurse her right foot moved to turn but her left foot remained planted on the floor. This caused the claimant's left knee to pop and hyperextend which resulted in a medial meniscus tear. The administrative law judge found that the claimant's left knee injury was idiopathic in nature and denied compensation benefits. The Full Commission reversed that decision. After citing the law regarding idiopathic injuries the Full Commission noted that at the time of claimant's accident she was not engaged in ordinary activities of standing and walking when her injury occurred. Instead, the Full Commission noted that claimant was actually in the process of attempting to turn in response to a call from a co-worker at the time her knee popped and her injury occurred. The Full Commission noted that a causal connection existed between the claimant's injury and her employment due

to the fact that claimant was in the process of turning to respond to the co-workers call at the time her injury occurred. The Full Commission noted that the immediate temporal relationship between the physical activity in question and the occurrence of the claimant's knee injury established the requisite causal connection between the performance of employment related duties and the injury which resulted.

Likewise, the claimant in this case has a history of injury to her left knee. As previously noted, the claimant had a prior injury to her left knee in 2002 which resulted in surgery by Dr. Tomlinson on September 5, 2002. Claimant was last treated for that left knee injury by Tomlinson in November 2002 and was released at that time. Kimberly Polite, claimant's immediate supervisor, testified that prior to January 1, 2005 claimant would occasionally complain about her knee; however, Polite testified that she did not remember which knee claimant complained about. Since claimant had prior injuries to both of her knees, it is possible that any complaints claimant made involved her right knee, not her left. Furthermore, and more importantly, there is no evidence that claimant has sought any additional medical treatment for her left knee condition subsequent to her release by Dr. Tomlinson in November 2002 until January 5, 2005. In addition, I believe it is also important to note that Dr. Tomlinson in his report of November 4, 2002 noted that he did not anticipate the claimant requiring any future medical treatment for her condition.

Furthermore, as in *Mize*, this claimant was in the process of performing an employment related activity at the time her injury occurred. As in *Mize*, the claimant was not engaged in an ordinary activity of standing and walking when her injury occurred. To the contrary, claimant testified that she heard a loud bang as if a bowling ball had struck the rake arm on one of the machines. The claimant testified that she began running toward Lane 2 and after taking approximately four steps her knee buckled. In my opinion, claimant was performing employment services at the time of this injury. While there was some questioning regarding whether claimant was actually running at the time of her injury,

I note that the medical reports contain a history of injury consistent with claimant's testimony that she was running. Beasley's medical report of January 5, 2005 reflects a history of claimant "running directly forward to get a bowling ball." The report of Jon Lee, a physical therapist, dated January 27, 2005 also notes a history of injury while running. Dr. Sites' medical report of February 24, 2005 indicates that claimant was "running down a lane." And finally, Dr. Arnold's medical report of August 9, 2005 reflects a history of claimant running at the time of her injury.

Finally, even though the claimant did have prior left knee problems, the evidence reflects that claimant's injury at work resulted in an exacerbation of that pre-existing condition. First, while Dr. Sites indicated that it was less likely than not that her knee symptoms were the result of the injury sustained on January 1, 2005, he also noted that it was more likely than not that claimant's symptoms represented an exacerbation of her pre-existing pathology.

She may have some ongoing difficulties with her knee, which could require arthroscopic intervention. In terms of causation, based upon the objective findings and within a reasonable degree of medical certainty it is less-likely-than-not that any ongoing knee symptoms are a result of her injury sustained on 01-01-05 and more-likely-than-not that any ongoing symptoms represent an exacerbation of a pre-existing knee pathology

The fact that claimant aggravated a pre-existing knee condition is also supported by the opinion of Dr. Arnold. In his report of August 9, 2005 he stated:

... I think a good component of this is coming from a patellofemoral disorder, some of which was pre-existing. It is hard for me to tell as we are coming into the game seven months after the injury, however I do think she did aggravate a pre-existing.

Aggravations of pre-existing conditions are compensable and a claimant alleging

an injury caused by a specific incident identifiable by time and place of occurrence does not have to prove that the injury was the major cause of their disability or need for medical treatment. *Farmland Insurance Company v. Dubois*, 54 Ark. App. 141, 923 S.W. 2d 883 (1986).

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that her left knee injury arose out of and in the course of her employment with the respondent. I do not find that claimant's injury was idiopathic in nature. Claimant's injury was not a spontaneous onset resulting from a pre-existing condition, but rather was the direct result of the claimant running in the performance of her job duties to check on bowling equipment. This injury aggravated claimant's pre-existing left knee condition according to the opinions of both Drs. Sites and Arnold. Accordingly, I find that claimant has proven by a preponderance of the evidence that the injury arose out of and in the course of her employment and that the injury was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal physical harm to her body which required medical services, and that claimant has offered medical evidence supported by objective findings establishing an injury. In this particular case, x-rays and the MRI scan were essentially read as normal. However, the MRI scan did reveal a small amount of swelling in the claimant's left knee. In addition, I note that Jon Lee, the physical therapist, in his report of January 27, 2005 also observed swelling in the joint line of claimant's left knee. In fact, Lee's report contains specific measurements of both the claimant's left versus her right knee indicating that some swelling was present. Finally, I note that Dr. Arnold in his report of August 9, 2005 notes a trace of effusion in the claimant's left knee.

Given the MRI scan as well as the reports of Jon Lee and Dr. Arnold indicating that swelling was present in claimant's left knee, I find that she has established her injury by

objective evidence and based upon the opinions of Drs. Sites and Arnold indicating that an arthroscopic procedure is necessary, I likewise find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal physical harm which required medical services.

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee while employed by the respondent. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE