

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F506403**

<b>MICHAEL ADKINS, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>CITY OF LITTLE ROCK, EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES, CARRIER</b>	<b>RESPONDENT</b>

**OPINION AND ORDER FILED MARCH 6, 2006**

Hearing before Administrative Law Judge Barbara Webb on December 5, 2005 in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Betty Demory, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted on December 5, 2005 to determine whether initial medical treatment sought by claimant was authorized in connection with his admittedly compensable injury within the meaning of the Arkansas Workers' Compensation Law.

A prehearing conference was conducted in this case on November 17, 2005, and a Prehearing Order was filed on November 21, 2005. At the hearing, the parties announced that the stipulations and issues, together with their respective contentions, were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as Commission's Exhibit 1.

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It was stipulated that the employment relationship existed between the parties on March 3, 2005 and at all other relevant times; that claimant sustained a compensable injury to his right knee on March 3, 2005; that claimant's temporary total disability rate is \$466 per week; that claimant reached the end of his healing period on June 22, 2005; and that respondents accepted the right knee injury as compensable.

By agreement of the parties, the primary issue presented is whether claimant is entitled to reimbursement for unpaid medical bills incurred prior to May 5, 2005; whether medical treatment administered prior to May 5, 2005 was authorized; and whether claimant is entitled to mileage for medical treatment sought from May 3, 2005 through May 4, 2005. At the hearing, the parties stipulated that the unpaid medical bills consist of a bill for a doctor's visit and x-ray of March 4, 2007; a doctor's visit of March 25, 2005; and an MRI that was performed on April 5, 2005. The parties further stipulated that the amount of the medical bills in dispute were as follows: Baptist Health MRI, \$517.50; Diagnostic Radiology, \$98.70; an after-hours clinic visit of \$56.30; an x-ray for \$45.88; and a bill from Dr. Hicks for \$56.30.

Claimant contends that he suffered a compensable injury on March 3, 2005 to his knee and complied with the guidelines of the Little Rock Police Department

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when he notified his employer of the injury on March 3, 2005 and sought medical treatment for his injury.

The respondents contend that claimant sustained a work related injury on March 3, 2005 and respondents have paid benefits to claimant. Respondents contend that the unpaid medical expenses and mileage were for medical treatment that was not authorized or treatment that occurred prior to the claimant's formal report of a work-related injury to his employer.

In addition to his own testimony, claimant called Sergeant John Merritt and Lieutenant Tim Calhoun. The respondents called Sherry Oswald as a witness. The record is composed solely of the transcript of the December 5, 2005 hearing and exhibits. 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 Ark. Code Ann. § 11-9-704:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That claimant sustained a compensable injury to his right knee on March 3, 2005.

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3. That claimant's temporary total disability rate is \$466 per week.
4. That claimant reached the end of his healing period on June 22, 2005.
5. That respondents accepted the right knee injury as compensable and paid benefits.
6. That claimant notified his employer of the injury on March 3, 2005.
7. That claimant is entitled to reimbursement of the medical bills and mileage for medical treatment rendered prior to May 5, 2005, as follows: Baptist Health MRI, \$517.50; Diagnostic Radiology, \$98.70; an after-hours clinic visit of \$56.30; an x-ray for \$45.88; and a bill from Dr. Hicks for \$56.30, and associated mileage for a total of 61.22 miles.

### **DISCUSSION**

Claimant, Michael Adkins, is a patrolman for the Little Rock Police Department and has been employed as such for 21 years. On the day of his injury, the claimant was going through a 40-hour in-service training and had reported to the SWAT team to do building search scenarios. The scenarios were performed at night time and participants wore protective gear. Claimant described the incident as follows: "So we were going through the scenario, and I took a right in the room, my knee locked up in a bent position. I couldn't get it unlocked, and I fell to the ground." Claimant testified that he tried to shake it off. He told the others to go on

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through the scenario and that he was going to stop for a bit. He said he was eventually able to get his knee straightened back up and walk with a limp. He explained that his group had finished the scenario by the time he rejoined the group. At the time, he saw Lieutenant Calhoun and advised Lieutenant Calhoun that his knee had been locked up, that he couldn't get it to straighten up, and that he was letting him know that whatever they needed to do, he thought he was going to be all right, and that he was just hoping it was a freak accident. The claimant explained that the time had gotten so late that he didn't go through another scenario but went home. Claimant explained that at that time there had been no documentation prepared, but that sometimes supervisors would not fill out the paperwork immediately or might pass the paperwork on to another supervisor. He returned to work the next day and tried to go through the scenarios. Claimant stated that he went out on the range to shoot and had to get in a kneeling position, but he was unable to do some of the exercise because it hurt too bad. At that time, he decided he should go and make sure that his knee was not broken or some other major damage to his knee.

The claimant testified that he went to an after-hours clinic, as opposed to the emergency room, with the hope that he would learn that there was nothing wrong, that he would receive some pain pills and rest throughout the weekend because he

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did not have to return to work until the following Monday night. Claimant testified that the doctor on duty took x-rays of his right knee. The doctor advised him that he should consult his regular doctor because of the fact that he might have torn a cartilage or a meniscus in his knee. The claimant continued to work, noticing that his condition was getting worse. He could not walk upstairs. Claimant recalled that his sergeant had been on vacation or in school and that when he returned, he told Sergeant Merritt about the incident. Sergeant Merritt contacted Lieutenant Calhoun. Sergeant Merritt filled out the paperwork and contacted the company nurse, Ms. Audrey, along with the claimant. The nurse was an employee of a private company nurse program used by the City of Little Rock as a 24-hour service. The claimant explained that they contacted Ms. Audrey at 3:18 in the morning and that she advised him to go see his doctor and provided him with a workers' compensation claim number. He set up the appointment with Dr. Hicks at the same after-hours clinic. At that time, Dr. Hicks referred the claimant for an MRI. The claimant testified that he had attempted to get in touch with Sherry Oswald, another company nurse. She was out of town and he left a message for her. The claimant testified that Ms. Oswald called him back the day after he had the MRI. He advised her at that time that Dr. Hicks had referred him to Dr. David Burnett. At that time, he was advised by Ms. Oswald not to see Dr. Barnett, but that she would make an

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appointment with another doctor and made an appointment with Dr. Pearce. She advised the claimant to pick up the x-rays and MRIs and take them with him to see Dr. Pearce. Claimant testified that he picked up his x-rays and the MRI report and delivered the reports to Dr. Pearce, who continued his treatment for his knee injury including right knee arthroscopy for a partial medial meniscectomy.

Claimant testified he was seeking payment for unpaid mileage incurred for seeking medical treatment for a total of 61.22 miles. Claimant testified the mileage to the Family Medical Clinic on March 4, 2005 was 14.18 miles. He testified that he traveled from his house to the Family Medical Clinic for his next visit -- after the referral from Ms. Audrey, the company nurse -- on March 25, 2005, for 8.05 miles. On April 5, 2005, the claimant traveled from his house to Baptist Hospital for an MRI referred by Dr. Hicks, for 10.09 miles. On May 4, 2005, the claimant traveled from his house to Baptist Hospital to pick up x-rays as directed by Ms. Oswald, for 10.09 miles. On May 4, 2005, claimant traveled from Baptist Hospital to the Family Clinic to get the x-rays, for 4.53 miles. On the same date, claimant traveled from the Family Clinic back to his house for 14.18 miles, resulting in a total of 61.22 miles for which he seeks reimbursement.

Lieutenant Tim Calhoun was called to testify by the claimant. Lt. Calhoun is the Unit Commander for the SWAT Unit of Little Rock Police Department and was

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so employed on March 3, 2005. On that date, the SWAT Unit was conducting in-service training for officers in the east part of Little Rock in an abandoned warehouse office complex. Lt. Calhoun testified that the claimant was present and participated in the training exercise. Lt. Calhoun testified that the claimant reported to him that he had sustained an injury on March 3, 2005, as follows:

Yes, sir. I'd left for a very short time period. I think I had gone four or five blocks down the road to get some drinks for some of the officers working for me. Upon returning, I think y'all were on a break, and I made contact with you on the outside of the structure. And you said that your knee had locked up or gone out on you or something to that effect, and that you - I asked you if you were okay. You said yeah I think I am.

Lt. Calhoun testified that the claimant indicated that it was going to be okay at that time but was aware that apparently some time later, the knee started giving the claimant problems. He testified that he received an e-mail from Sergeant Merritt to obtain documentation of what had happened that day. At that time, he prepared a short memorandum dated March 17, 2005 directed to his supervisor, Captain Lowery, in which he wrote as follows:

On 3/3/05, the SWAT Unit was instructing officer in-service in the 500 block of Sowell Street. Detective Adkins advised me that he was participating in an active shooter's scenario when his knee "locked up" on him. He advised that he had to stop his participation and was later able to resume training. An e-mail dated 3/15/05 from Detective Adkins to his supervisor (Sergeant Merritt) and myself indicates that the knee began to give him problems the next day (3/4/05) and he

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sought medical treatment. He advised in the email that he had hoped that his knee would be get better but he is apparently still having problems with it.

Lt. Calhoun testified that at the time, he did not believe the claimant fit into the category of someone who needed treatment or needed to have paperwork followed up for a workers' comp claim because of the claimant's statements that he felt like he was okay and could resume training.

Lt. Calhoun testified that the policy of the Little Rock Police Department is set forth in General Orders Section 4108 regarding workers' compensation insurance. That policy provides that all police employees are covered for job-related injuries by the City of Little Rock's workers' compensation insurance. It further provides as follows:

Employees who, during the performance of their official duties, sustain an injury or undergo any medical examination, medical treatment, and/or medical testing due to an on-duty incident, shall notify a supervisor immediately. (a) Upon the initial notification of the injury or medical examination, medical treatment, and/or medical testing, the supervisor will immediately contact "the company nurse" at 1-877-740-4017, a toll-free number. The supervisor will then initiate and complete a workers' compensation file and forward such file through the chain of command for review.

Lt. Calhoun agreed that he did not report the incident to the company nurse. He explained that after learning that the claimant had knee problems, he asked

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several follow-up questions to ascertain whether medical treatment was needed and concluded that the situation did not necessitate further action.

John Merritt, a Sergeant at Little Rock Police Department, also testified. Merritt was the claimant's supervisor. Sgt. Merritt explained that whenever officers are injured on duty, a sergeant has to prepare an evaluation form to detail or explain the occurrences that happen when they submit their paperwork on the injuries. In the instant case, the supervision evaluation form indicates that the claimant reported the incident to the sergeant on March 17, 2005. It states that he was attending in-service school, had hurt himself, and advised Lt. Calhoun and Sgt. Hilton about what happened. It further states that claimant had to go to the Family Health Clinic on March 4. The form also indicates that the company nurse that was notified was Ms. Audrey. She was notified at 3:15 in the morning. At that time, she gave a claim number.

Sgt. Merritt testified that he communicated to the nurse what the situation was and the nurse advised that the claimant needed to see a doctor. Sgt. Merritt explained that he followed the city's policies and procedures when he contacted the company nurse upon notification by the claimant of the situation. Sgt. Merritt testified that claimant communicated the situation to him on the date that Merritt had returned from vacation. He indicated that the call to the company nurse occurred

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on March 18, 2005 at about 3:15 a.m. Sgt. Merritt testified that he believed the claimant had adhered to the city policy by advising his immediate supervisors of the situation. He testified he had been a supervisor for approximately four and a half years. He further testified that when somebody reports that they may have been hurt or are hurt on the job, he immediately refers to his general orders and completes the appropriate paperwork. He agreed on cross-examination that there had been disciplinary action taken for the reason that Lieutenant Timmons believed that Officer Adkins had followed the policy, but that Timmons believed Adkins violated the spirit of the policy by not communicating the injury the following day.

The Respondents called Sherry Oswald with Risk Management Resources to testify. She handles workers' compensation claims on a daily basis, including claims with the City of Little Rock. She receives claims from the company nurse after the injuries are reported by the claimants and/or supervisors. She received notice of the instant claim on March 17, 2005 and sent him a letter on March 22, 2005. The office was closed on March 25, 2005 due to a holiday. She was on vacation for the next week and returned on April 4, 2005. She had a message from the claimant on her voice mail and returned his call on April 6, 2005. At that time, the claimant told her that he had an injury, had reported his injury to Lt. Calhoun, had sought treatment on March 4, 2005, and had an MRI recommended by his

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personal physician on the previous day. She testified that she did not receive any notice or request for certification from the doctor or the hospital for the MRI. She testified that she had contacted Dr. Hicks' office on March 23, 2005 and informed them that certification would be necessary for any testing. She testified that she denied payment for the March 5 visit to Dr. Hicks based on the fact that the March 5 report indicated that the claimant was going to file the claim on his health insurance until he realized the severity of his injury. She denied payment for the MRI based on the fact that it was referred from the unauthorized visit on March 25 and was not pre-certified. On cross-examination, she admitted that she directed the claimant to provide the MRI to the orthopedic surgeon for his use in subsequent treatment of the claimant.

In lieu of calling Jill Johnson as a witness, the parties agreed to stipulate that she did not receive notification, while Ms. Oswald was on vacation, that Mr. Adkins was seeking additional treatment or certification.

Based on the preponderance of the evidence, I find that the claimant has proven that he is entitled to reimbursement for the medical bills and mileage sought by way of his claim. The first medical treatment was after hours on March 4, 2005, the day following the injury. Claimant had already reported the injury to his supervisor in accordance with the policy of the City of Little Rock. Claimant testified

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that his knee had continued to give him problems and had become very painful. Claimant went to the clinic in lieu of going to the emergency room and with the hope that the injury was not severe. The doctor performed a very routine examination and took x-rays. Based on the x-rays, the doctor referred the claimant to his regular doctor, Dr. Hicks. Respondent's denial of payment on the basis that the claimant chose to file it on his own health insurance should not bar the claim especially in light of the supervisor's failure to properly document the report of injury on March 3, 2005, and to properly notify claimant of his rights and responsibilities with a Form AR-N. See, *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000). In light of the emergency nature of the treatment and the failure of the respondents to provide the required Form AR-N to the claimant until two weeks later, I find the March 4, 2005 visit to the Family Medical Clinic, x-rays, and associated mileage compensable.

Respondents refuse to pay the remaining medical treatments on the basis that the treatments were neither authorized or pre-certified. However, the testimony of the claimant corroborated by Sergeant Merritt clearly shows that the March 25 visit to Dr. Hicks by claimant was at the direction of the company nurse given during the telephone call when the injury was reported on March 18, 2005. Dr. Hicks then referred the claimant to Baptist Hospital for the MRI. The evidence reflects that

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claimant made a good faith attempt to notify the respondents of the MRI by telephone, but was unable to reach someone due to the holiday and ensuing vacation of the adjuster. Respondents contend that Dr. Hicks should have pre-certified the MRI based on their prior notification to his office. While such actual notice was made to Dr. Hicks, the claimant was not given the same notice. I find that claimant acted in reasonable reliance on the facts that he was having the MRI on referral from his authorized treatment by Dr. Hicks on March 25, 2005, and had notified the respondents of the upcoming appointment by leaving a detailed message concerning the appointment on Ms. Oswald's voice-mail. Moreover, I find that the respondents should be further estopped from denying responsibility for the cost of the x-rays and MRI when the respondents directed the claimant to obtain the x-ray and MRI reports for use by the orthopedic surgeon in his review and determination of necessary medical treatment. *Southern Hospitalities v. Britain*, 54 Ark. App. 318, 925 S.W.2d 81 (1996).

#### **AWARD**

Based on a preponderance of the evidence, I find that claimant has proven that he is entitled to reimbursement of the medical bills and mileage for medical treatment rendered prior to May 5, 2005, as follows: Baptist Health MRI, \$517.50; Diagnostic Radiology, \$98.70; an after-hours clinic visit of \$56.30; an x-ray for

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\$45.88; and a bill from Dr. Hicks for \$56.30 and associated mileage for a total of 61.22 miles. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

**IT IS SO ORDERED.**

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**HONORABLE BARBARA WEBB**  
**Administrative Law Judge**