

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F501809**

**WILLIE BELL, EMPLOYEE**

**CLAIMANT**

**RAZORBACK CONCRETE CO., EMPLOYER**

**RESPONDENT**

**WAUSAU BUSINESS INS. CO., CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 24, 2006**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on November 17, 2005, at Blytheville, Mississippi County, Arkansas.

Claimant represented by the HONORABLE JOE M. ROGERS, Attorney at Law, West Memphis, Arkansas.

Respondents represented by the HONORABLE MICHAEL R. MAYTON, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-styled claim to determine the claimant's entitlement to workers' compensation benefits.

On September 6, 2005, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

In addition to the stipulations contained in the Pre-hearing Order, Commission Exhibit #1, the parties further stipulated that December 28, 2004, was the date of the claimant's accident;

that he earned wages sufficient to entitle his to weekly compensation benefits of \$274.00/\$205.00, for temporary total/permanent partial disability; that the claimant first sought medical treatment relative to his right knee at the emergency room of Great River Medical Center on January 17, 2005; that claimant started treating with Dr. Yoa on January 18, 2005, at which time he was taken off work from January 19, 2005, through January 27, 2005; that the claimant returned to light duty work on January 28, 2005, and continued working same through on or about March 2, 2005, when he was released to full duty. The parties further stipulated that the claimant continued working at the plant until April 22, 2005, and that on April 25, 2005, claimant started part time work.

Claimant asserts entitlement to temporary total disability benefits from April 25, 2005, to an undetermined date. Respondents contend that the claimant did not sustain a compensable injury; that the claimant's knee problems were pre-existing and not related to the December 28, 2004 incident. Respondent also contend that Dr. Yoa released the claimant to full duty on February 17, 2005, and as such, if the claim is found compensable, claimant would not be entitled to temporary total disability benefits after the date of his release to full duty. Finally, respondents contend that the medical records of Dr. Yoa relative to the claimant do not show medical proof within a reasonable degree of medical certainty that the meniscus tear was related to the December 28, 2004, incident.

The testimony of Willie James Bell and Randy Alton Chandler, coupled with medical reports and other documents comprise the record in this claim.

### **DISCUSSION**

Willie James Bell, Jr., the claimant, with a date of birth of August 29, 1970, is a high

school graduate. Claimant's testimony reflects that since graduating high school in May 1989, he has been pretty much steadily employed until the time of his injury at respondent on December 28, 2004.

Claimant's employment history reflects that he performed janitorial type work for Blytheville Cleaning Service, Baptist hospital, which entailed buffing and striping floors. Claimant also performed substantial work in fast food restaurants, with duties ranging from cook to bussing tables, dishwasher, and cleaning. Claimant was also employed by the Blytheville Public Works - Sanitation department with duties picking up trash. The testimony of the claimant reflects that he was employed for a short period of time at Maverick Tube as a heat treat helper. Claimant's testimony reflects that his work history has consisted of strenuous labor-intensive type work.

The testimony of the claimant reflects that while participating in a sports he fell and injured his right knee on or about November 14, 1996, and for which he underwent surgery under the care of Dr. Yoa on December 20, 1996. On July 22, 1998, claimant was involved in a motor vehicle accident wherein he sustained bruises to his knees. Claimant acknowledged that he was seen by Dr. Yoa on September 3, 1998, relative to an injury suffered by him on September 2, 1998, when he slipped on some peas in the back of a truck while employed by Bush Canning. As a result of the injury claimant considered surgery, however did not have it. Finally, the medical reflects that claimant was seen by Dr. Yoa on June 17, 1999, at which time he relayed that he had been working without problems, however that his right knee buckled if he moved the wrong way. Claimant was provided a knee brace to wear on the right knee by Dr. Yoa. Claimant maintains that from June 17, 1999, until his incident in the employment of respondents on December 28,

2004, he did not have any more medical treatment for any problems with his right knee.

Claimant asserts that he had recovered from his prior right knee complaints at the time he commenced his employment with respondent on July 7, 2004. Claimant noted that when he began working at respondents he was working through Dawson Employment, a temporary employment agency, at plant seven of respondents. Plant seven was located near the Nucor Steel plant. Claimant explained his employment duties at the facility of respondents through the temporary employment agency:

First, we was out there cleaning up one of the plants they was getting ready to send off to North Little Rock. They was redoing the plant. And when I saw about how much walking and climbing that I was going to do, I wore my knee brace to work.

So I wouldn't injury it or have it swelling up on me after I get through from the job. (T. 16).

Claimant testified that while he had not had any medical treatment regarding his right knee since 1999, he did wear the knee brace throughout the time that he was assigned to duties at Plant seven of respondents. Claimant reasoned, regarding the afore, because there was so much walking and climbing on top of the plant.

The testimony of the claimant reflects that he performed some welding and climbed on top of the plant to chip off old concrete as preparation for getting the plant ready to be sent off to North Little Rock. Claimant was employed by the temporary employment agency at the time he discharged the afore duties. Claimant estimates that he was employed by the temporary agency for three week to a month.

Following his employment with the temporary employment agency claimant was hired as a full time employee of respondents by Randy Chandler, the plant manager. After the work was

completed regarding Plant seven of respondent, claimant discharged duties at the respondents' Blytheville plant. The testimony of the claimant reflects that after being trained he worked as the load operator. In describing the duties of the load operator, claimant testified:

Well, load operator keeps the bins, hoppers full of sand, rocks. Anybody comes in that wants any material on their trucks, we, I would, they would call me on the radio and I would load them and let me know that somebody is coming back to be loaded, to keep the ground, the front yard taken care of and to keep the pits in the back clean and the excess concrete that they come back and they pour it, keep the pits and put it on the pile. Other than, and checking the loader to make sure it's, you know, you've got your oil, your fuel in it. (T. 18-19).

Claimant operated a front end loader in the discharge of his employment duties. Claimant's description of the front end loader reflects:

Well, it's a big tractor with a big scoop in the front, maybe three yards, two and a half yard bucket. You sit in the seat and you operate it and it picks it, scoops up the sand. You take it to the hopper and loads it up and pours into another hopper and it fills it up. Then you do that all day until, you know, you get a chance to break. (T. 20).

Claimant explained that in mounting the front end loader you climb up three steps until you reach the platform, and then you go inside of it to the seat. In getting to the seat of the front end loader, claimant testified:

To get to that seat, you have to pivot and turn to sit in the loader's seat, because there's a tool box sitting there and it sticks out before the seat. Like this seat here, sitting here, and this tool box would sit out his far. And that's where the tool box would sit out. (T. 20).

The testimony of the claimant reflects that after approximately two (2) weeks of training in the operation of the front end loader, he operated same in the discharge of his employment duties as an employee of respondents commencing in July 2004. Claimant noted that if Mr.

Chandler, the plant manager, was not present then supervisory responsibility shifted to the dispatcher, Chad McCullar.

On December 28, 2004, claimant asserts that he suffered an injury to his right knee which serves as the basis for the present claim. In describing the mechanics of the accident, claimant testified:

Well, on that day, I believe we was pouring quite a bit of yards and we was pretty busy. And around, I'm thinking around lunch time, I caught a little break and went in. They was buying everybody lunch during that time, sometime they would. And I went in an I grabbed a soda. And I had said I had a burger, too, but I didn't. But I had a soda. And I rushed back on the loader. And as I rushed up on the loader to get into my seat, that's when my feet, my right leg is turned. At the same time while I'm pivoting my right leg to get around the tool box is when I struck the tool box at the corner to get in the seat. During that time, I went ahead and continued working. Later on that day, I let Chad know that I had injured, well, I noted the swelling. I noticed the swelling and I let Chad know. And we figured that in a couple of days it might go away. (T. 22-23).

Claimant's testimony reflects that the accident occurred at or after twelve noon. Claimant retrieved his soda from the office after parking the front end loader near the back door. Claimant denies that he was having physical difficulty with his right knee at the time he went in the office to get the soda. Claimant's testimony reflects that he had been able to perform his job duties in his employment with respondents prior to December 28, 2004, without any physical problems relative to his right knee.

Claimant noted that on the days they were busy, and that boss would say that they should eat lunch as the go. Claimant asserts that on December 28, 2004, he bought his lunch to work and put it in the toolbox on the front end loader. Claimant explained that after getting the soft drink from the office he returned to the front end loader:

Well, getting on the loader, climb up on the loader, brushing on it, getting ready to get in the, before you get in the seat, you have to pivot, non matter who it is or anybody. If you're not pivoting in your seat, turn to get in it, you're going to hit the tool box. You have to turn at an angle to get in the tool, I mean, the seat. (T. 25-26).

Claimant explained the he pivot on his right foot as he turned his body to get into the seat of the front end loader. The front end load is equipped with a cab. Claimant testified:

As I was pivoting, turning at the same time, that's when the right side of this knee struck the tool box. (T. 26).

Following the accident, claimant testified he continued performing his job duties.

Claimant explained that the sensation of his right knee striking the corner of the toolbox felt similar to hitting "your funny bone". Claimant added that he did not really feel pain but a heat sensation. Claimant continued feeling the heating sensation coming from his knee until he notice the swelling.

Claimant testified that in operating the front end loader he uses his right leg for the gas and brakes, similar to driving a car. As he continued performing his job duties claimant testified the he began to experience pain in the right knee and that he noticed the swelling. Claimant's testimony reflects that because Randy Chandler was not present he notified the dispatcher, Chad McCullar, of injury to his right knee. Claimant testified:

Chad told me that maybe it, it's just a, maybe I just bumped it, it could go away, the swelling go down. He said he would let Randy know. And days would pass and I let Chad know that the pain is still there. (T. 28-29).

Claimant testified that the symptoms in his right knee, pain and swelling, caused him to have problems walking. Claimant added that the pain got so bad that it caused him to limp, and that in walking he used his "tip toe" because he could not put his right heel down. Regarding the

number of time that he notified the dispatcher of his continuing problems with the right knee, claimant testified:

I believe every, might have been every other day. But I did know that I let him know every week until I went and told them that I had to go ahead on to the emergency room to see what was wrong. (T. 29).

Claimant asserts that when he told Mr. McCullar the he needed to go the emergency room to have his knee checked out he was told go ahead.

Claimant testified that he was seen at the emergency room on January 17, 2005, relative to his right knee complaints and relayed a history of the late December 2004, work accident. Claimant was referred to Dr. Yoa, a Blytheville orthopedic surgeon, by the attending emergency room physician. Claimant testified that following the January 17, 2005, emergency room visit he provided paperwork that had been furnished by the emergency room to Randy Chandler.

Claimant asserts that Mr. Chandler relayed that if he had known the knee complaint had gotten that serious the emergency room visit could have been avoided and a direct appointment made with Dr. Yoa. Claimant testified that at that point Mr. Chandler made an appointment for him to be seen by Dr. Yoa.

The testimony of the claimant reflects that he was seen by Dr. Yoa on January 18, 2005, for complaints relative to the right knee. Claimant provided a history of the December 2004, right knee injury to Dr. Yoa. Following his examination of the claimant's knee, Dr. Yoa directed the claimant to remain off work from January 19, 2005, through January 27, 2005. Claimant was again seen by Dr. Yoa on January 26, 2005, at which time a MRI scan of the claimant's right knee was scheduled. Claimant was released to light duty work following the second visit to Dr. Yoa.

The testimony of the claimant reflects that during the time he was medically released to light duty work he was assigned the duties of answering the phone in the office and assisting the dispatcher with the paperwork. Claimant added that he was trained on how to do the paperwork. Unlike working on the front end loader, claimant testified that while he was assigned light duty he did not work any overtime although he did work a forty-hour week, sometimes. Claimant testified that Dr. Yoa directed him to use a brace for the right knee and crutches. Claimant did not have a brace, however was allowed to use that of the brother of Randy Chandler, which he continues to wear. Claimant maintains the he actually used crutches and wore the knee brace while discharge light duty work for respondents.

Claimant testified that his leg was still painful and the knee swollen while he performed the assigned light duty work for respondents. Upon returning to Dr. Yoa on February 14, 2005, claimant was informed that respondent-carrier was denying the recommended surgery relative to the right knee. Claimant testified that after respondents denied the recommended right knee surgery he was unable to obtain further medical treatment.

Claimant acknowledged that on February 17, 2005, he called Dr. Yoa's office and requested to be released to return to full duty work. Claimant explained the afore:

Well, of course, getting behind and I wasn't getting any overtime by just sitting at the desk answering the phone. And I needed to be back on the yard, yet still in pain. The swelling was still there. So I figured if I could just tie something around my knee and make it numb, I can work with it. So. (T. 37).

Claimant noted that he had financial obligations and no other means of support. Claimant has four children and was being required to pay child support. Per his request claimant was returned to full duty work by Dr. Yoa, and did so from February 18, 2005, through April 22, 2005.

Claimant's testimony reflects that during the afore period his right leg remained painful.

The testimony of the claimant reflects that on the morning of April 22, 2005, while en route to West Memphis he got detained:

That morning I needed to go to West Memphis to pick up some money from the credit union. Razorback used the credit union if you wanted to save some money, put, I would have them take fifty dollars out of my check where I could have something to use in case of, you know, a time of emergency. So I asked the boss can I go to West Memphis to go and pick up this fifty dollars out of the credit union to come down her and pay on my fine.

\* \* \*

On the way back, coming, I think that would be the 63 exit, coming into Blytheville, they had this road block, you know, checking for ID, drivers license, I mean drivers license and insurance. And as I'm going through there, they stopped me. I give them my drivers license. And my insurance wasn't up to date, so they called it in and they found that I had a warrant at the county. I've been paying, and paying restitution, restitution fine for working and drawing unemployment. (T. 38-39).

Claimant was incarcerated for twelve (12) days. During his incarceration claimant testified that he called respondents in an effort to preserve his job. Claimant's testimony reflects that he was informed that the job would be held for a short period if he could get out of jail. Following his release from jail claimant returned to respondent, however the position had been filled.

After he was unable to return to the employment of respondents claimant sought work elsewhere. Claimant testified that a few weeks after he was released from jail he work approximately one month at City Electric. Claimant explained his reasons from leaving the job:

Because the swelling of my knee and the things that they needed me to use and the packer that you pack dirt down at the new school where they was pouring concrete at, and I was working as a laborer. And so when you're using this packer, you have to brace your body up against it, and I had to use my knee. And I know ain't no way I could do that. (T. 41).

Claimant asserts that given his past work history and the present status of his right knee, he is unable to find a job that he could perform. Claimant desires further medical treatment relative to his right knee.

Regarding his ability to perform regular job duties following his requested release to same from Dr. Yoa, claimant testified that while he continued to experience symptoms in the right knee he was able to do the work. Claimant explained:

Yes, sir, as long as I was sitting still and I'm using, steady using the right leg to work the machine.

And when the day is about over and when I get up, limping, And the pain is still there. (T. 45).

Claimant acknowledged that had he not encountered the road block on April 22, 2005, which resulted in the lost of his job he would have continued performing assigned job duties for respondents. Claimant's testimony reflects that he would have continued doing the front end loader job for respondents as long as he could. Claimant noted that even while he was in jail he kept the right knee wrapped up.

Claimant has not received any medical treatment for his right knee complaint since being seen by Dr. Yoa on February 14, 2005. Claimant testified that respondent-carrier continued to pay for prescription medication relative to his right knee complaint after they denied authorization for the recommended surgery. Claimant noted that respondent-carrier refused to authorize payment for him to be seen by any doctor regarding his right knee complaint, and he did not have any money to pay for medical treatment. Claimant testified that he had health insurance during his employment with respondents, however the health care carrier would not authorize medical treatment relative to his right knee.

Claimant acknowledged that once he returned to unrestricted duty on February 18, 2005, he worked quite a bit of overtime. Claimant explained that he had a \$352.00 child support obligation to pay every two weeks, and that working the overtime was the only way he could make it. Claimant testified that in addition to looking work on his own, he has also sought work through the Dawson Temporary employment agency since having to leave the job with City Electric.

Randy Alton Chandler, the plant manager for the Blytheville facility of respondents, testified that he hired the claimant. Regarding the claimant's December 28, 2004, right knee incident, Mr. Chandler testified:

At some point before the initial emergency room visit on January the 17<sup>th</sup>, Mr. Bell had asked me about our health insurance, because he mentioned that he needed to go get water drained off his knee.

And I told him it would cover it, but he needed to keep in mind that we had a thousand dollar deductible.

\* \* \*

He had mentioned it [hitting his knee at work] to me, but it was after telling me that he needed the water pulled off of his knee, and I'm not exactly sure how long after that. I mean, it could have been a week; could have been a week and a half. But he did mention to me hitting the tool box when he climbed on the loader. (T. 53-54).

Mr. Chandler denies that a discussion was had relative to a work related injury at the time claimant first inquired about the health insurance. Mr. Chandler acknowledged that prior to the time claimant was first seen at the emergency room on January 17, 2005, he had reported the incident involving the toolbox on the front end loader.

Mr. Chandler acknowledged that while the claimant was performing light duty work

answering the telephone in the office he did not work any overtime. The testimony in the record reflects that when claimant worked full duty and overtime he was paid time and a half.

Regarding the claimant's assigned light duty work, the testimony of Mr. Chandler reflects:

. . . . My company would not pay somebody time and a half to sit there, you know. It's kind of, I tried to get him work that he could do, you know, sitting at the desk so he couldn't, so he wouldn't have to stand. (T. 56).

The testimony of Mr. Chandler reflects that once the claimant produced the full duty release from Dr. Yoa on February 18, 2005, he was returned to the front end loader position where he could earn overtime pay. Claimant continued working full duty through April 22, 2005.

Following the claimant's incarceration he contacted Mr. Chandler and asked if his job could be held for him. Mr. Chandler's testimony reflects:

We talked, I believe it was on that following Friday, Willie and I did. And I told him that I was going to do my best to keep his job, but he needed to hurry up and get out. Well, when Monday morning rolled around, when Tony [Beard, area manager] called me, he asked me if Willie was there, and I said no, sir. So that's when he decided to let Mr. Bell go. (T. 58).

The testimony of Mr. Chandler reflects that from the time claimant commenced performing the duties of the front end loader operator for respondents in July 2004, he did not have any physical problems doing the job prior to December 28, 2004. Mr. Chandler testified that he did not observe the claimant limping prior to December 28, 2004. Mr. Chandler's testimony reflects that he was almost always at the Blytheville facility of respondents, however conceded that he may have been out on a job at the time the claimant's accident is alleged to have occurred.

Mr. Chandler testified that perhaps a day or two before the claimant went to the

emergency room on January 17, 2005, Chad McCullar, the dispatcher, mentioned that the claimant was having problems. Mr. Chandler's testimony reflects regarding the communication of Mr. McCullar:

He had mentioned it to me. But it was not like it was a first report of injury. It was like Willie bumped his knee, like it wasn't no big deal, you know. So I - - (T. 62).

Mr. Chandler concedes that Mr. McCullar relayed that the claimant indicated that had hurt his knee when he bumped on the loader.

Mr. Chandler testified that when the claimant presented him with the paperwork from the January 17, 2005, emergency room visit regarding his right knee:

When he came to me with the paper that next morning, I called my safety manager and let him know what was going on, and he said all you can do is call the doctor's office and make his appointment and it will be up to the insurance company, the fellow that, you know. (T.63).

As a consequence of the afore, Mr. Chandler called Dr. Yoa's office and arranged an appointment for the claimant.

Mr. Chandler testified that he informed Tony Beard, the area manager who is located at the West Memphis office, prior to the claimant's arrest of the pending workers' compensation claim. Mr. Chandler further testified:

He was aware. And by the same token, he was aware when Mr. Bell was released, because I talked to him and my safety manager throughout this whole thing, because Mr. Bell wanted to run the loader while he was on light duty and they advised me that light duty is light duty, you cannot let him do - -

Tony was aware of the whole situation.(T. 64).

Mr. Chandler asserts that the claimant asked him about getting back on the loader while

he was on light duty. After checking with Sam Berry, the safety manager, regarding the claimant's request, Mr. Chandler testified that he was told that until the claimant was released to full duty by the doctor he could not run the loader. The information was relayed to the claimant by Mr. Chandler. Mr. Chandler added that the next thing he knew claimant had obtained a full duty release. Mr. Chandler conceded that the claimant could make "quite a bit more money" operating the loader that he could working light duty in the office.

A review of the medical evidence in the record reflects that claimant received treatment from Dr. Joseph Yoa, a Blytheville orthopedic surgeon, as early as December 4, 1996, relative to his right knee. The last documented medical treatment received by the claimant relative to his right knee prior to his employment by respondent is reflected in a June 17, 1999, follow-up visit to Dr. Yoa. At the time of the June 17, 1999, visit the claimant was working regular duty without problems. The June 17, 1999, office note reflects that claimant was to follow up on a per needed basis and that he could continue regular duty. (RX. #1, p. 24).

There is no evidence that claimant received medical treatment relative to his right knee between the June 17, 1999 visit to Dr. Yoa, and a January 17, 2005, emergency room visit to Great River Medical Center. At the time of the emergency room visit claimant relayed a history of hitting his right knee three weeks earlier at work. In addition to reciting the mechanics of the claimant's injury the emergency room report observed the right knee as swollen, as well as painful. (RX. #1, p.25-26). Claimant was referred by the attending emergency room physician to Dr. Yoa for follow-up treatment regarding his right knee.(RX. #1, p. 27).

On January 18, 2005, claimant was seen by Dr. Joseph Yoa, a Blytheville orthopedic surgeon, pursuant to the attending emergency room physician. Claimant relayed a history of the

December 28, 2004, toolbox incident at work. Claimant also relayed to Dr. Yoa that he had no problems with the right knee since his prior surgery until the December 28, 2004, incident.

Following his examination Dr. Yoa assessed the claimant's complaint as contusion of the right knee. (RX. #1, p. 29-30). The January 26, 2005, report of Dr. Yoa relative to the claimant's follow-up visit reflects an assessment of "contusion right knee, possible lateral meniscus tear". (RX. #1, p. 32).

On February 10, 2005, claimant underwent a MRI scan of the right knee at Great River Medical Center pursuant to the recommendation of Dr. Yoa. (RX. #1, p. 33). Claimant was seen in follow-up by Dr. Yoa on February 14, 2005. The February 14, 2005, office note of Dr. Yoa relative to the claimant reflects, in pertinent part:

#### **INVESTIGATION RESULTS**

##### Imaging

Knee radiography: R

result: From ER: Small to moderate spurs med and lat fem,  
lat tib, sup and inf patella done: Monday January 17, 2005

limb MRI

result

R knee MRI: Spurs P/F joint, medial and lateral compartments, cyst posterior lateral tibia. Horizontal Grade II M/3 lateral meniscus on image only. Large Grade II P/3 medial meniscus possibly exiting inner rim and superior surfaces. ACL absent. done: Thursday, February 10, 2005.

#### **ASSESSMENT**

Contusion right knee, possible medial meniscus tear. Degenerative area in the mid-third lateral meniscus  
osteoarthritis: right knee

#### **PLAN**

##### SERVICES PROVIDED

discussion regarding the treatment plan

Discussed Rx options with pt including nonop vs op. Pt desires surgery. Told him that he will very likely continue to have pain and swelling after surgery due to the osteoarthritis. There will hopefully be some improvement if a meniscus tear is found and

removed. (RX. #1, p.35).

The February 14, 2005, office note of Dr. Yoa reflects that the claimant was released to light duty restrictions of primarily sitting work with very limited walking and standing.

On February 15, 2005, Dr. Yoa authored a report relative to the claimant pursuant to an inquiry from respondent-carrier. The report reflects, in pertinent part:

I received a message asking me how Mr. Bell's 2/10/05 right knee MRI findings relate to his 12/28/04 work injury where his anterior right knee struck a tool box as he was climbing onto a front end loader. The absent anterior cruciate ligament, bone spurs, and posterior tibia cyst are all pre-existing to the work injury. The lateral meniscus abnormality is probably also pre-existing since it is in the area of a previous large tear.

The medial meniscus defect is new and was not present on right knee MRI scans on 12/14/96 and 9/22/98 and it was not visible at the time of right knee arthroscopy on 12/20/96. It is impossible to determine exactly when the medial meniscus defect occurred. It would be unusual to tear a meniscus by striking the anterior aspect of the knee as the 12/28/04 injury was described. I did ask Mr. Bell specifically whether he had any problems with his right knee prior to the 12/28/04 injury. He has had continued pain. As of 2/14/05, he indicated that his knee pain had not improved and that it was still bothering him.

Treatment options at this time can include continued nonoperative treatment including rest, continued ibuprofen and use of his knee brace. Nonsurgical treatment has not led to improvement thus far, about 1.5 months following his injury. Surgical treatment can include right knee arthroscopy. Partial medial meniscectomy can be done if a tear is found in the location of the MRI defect. I told Mr. Bell that he can expect to have residual right knee pain and swelling because of the accompanying osteoarthritis. He would like to have arthroscopy since he has not noted significant improvement with nonsurgical treatment. (RX. #1, p. 37).

On February 17, 2005, claimant called the office of Dr. Yoa and requested to be returned to regular duty. (RX. #1, p. 38). A February 18, 2005, work status report was issued by Dr. Yoa releasing the claimant to return to regular work duty. (RX #1, p. 39). Dr. Yoa completed a

Physician's Report regarding the claimant on October 13, 2005, wherein he relayed that he was unable to declare an exact cause of the claimant's right knee medial meniscus tear. (CX. #1, p. 22).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witness, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

### **FINDINGS**

1. The Arkansas Workers Compensation Commission has jurisdiction of this claim.
2. On December 28, 2004, the relationship of employee-employer-carrier existed among the parties.
3. On December 28, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$277.00/\$205.00, for temporary total/permanent partial disability based on average weekly wage of \$411.00.
4. On December 28, 2004, the claimant sustained an injury to his right knee arising out of and in the course of his employment.
5. The claimant was temporarily totally disabled and within his healing period from the December 28, 2004, scheduled right knee injury, and not working from approximately May 4, 2005, and continuing, exclusive of a one (1) month period wherein he was employed, through the end of his healing period or returns to gainful employment.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's right knee injury of December 28, 2004.
7. The respondents have controverted the claimant's entitlement to workers'

compensation benefits growing out of the December 28, 2004, right knee injury in its entirety.

### CONCLUSIONS

Claimant was employed by respondents from July 2004, through April 22, 2005.

Claimant asserts that on December 28, 2004, he suffered an injury to his right knee, which became symptomatic and required medical treatment. Claimant asserts entitlement to medical benefits, to included surgery, and temporary total disability benefits subsequent to April 22, 2005. While acknowledging an incident occurred involving the claimant's right knee on December 28, 2004, respondents deny that the same resulted in a compensable injury warranting the payment of either indemnity or medical benefits to and on behalf of the claimant.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provisions. To prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i).

In the instant claim it is undisputed that the claimant had suffered a prior injury to his right knee for which he had undergone surgery on December 20, 1996, under the care of Dr. Joseph Yoa, a Blytheville orthopedic surgeon. There is no evidence in the record to reflect that

the claimant required, sought, or obtained medical treatment relative to his right knee subsequent to June 17, 1999. The credible testimony in the record reflects that claimant successfully discharged his assigned job duties in the employment of respondents without restrictions or physical limitations from July 2004 through December 28, 2004. Further, the credible evidence in the record reflects that claimant reported the December 28, 2004, injury to appropriated supervisory personnel following its occurrence and prior to seeking medical treatment on January 17, 2005.

At the time claimant was seen at the emergency room of Great River Medical Center on January 17, 2005, the attending medical personnel documented objective findings evidencing the injury to the claimant's left knee, to include swelling. Later diagnostic studies, to include a MRI scan of the claimant's right knee, also identified objective finding of an injury. In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990).

In his February 15, 2005, response to an inquiry by respondents, Dr. Yoa, who had previously treated the claimant with a surgical procedure on December 20, 1996, and on subsequent occasions in June 1999, outlined his assessment of the claimant's complaint growing out of the December 28, 2004, incident. Dr. Yoa had access to the prior medical records of the claimant to include prior MRI scans in making his assessment. In noting that the finding of the medial meniscus defect in the claimant's right knee was new, Dr. Yoa opined that it was impossible to determine exactly when it occurred. There is no evidence in the record to reflect that the claimant registered complaints, limitations, or physical restrictions relative to his right

knee during his employment by respondents between July 2004, and December 28, 2004.

The credible evidence reflects that the claimant had his onset of symptoms of pain and swelling in his right knee following the December 28, 2004, accidental injury in which his right knee struck the corner of the toolbox and he was climbing on the front end loader while discharging employment duties for respondents. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

The claimant has sustained his burden of proof by a preponderance of the evidence that he suffered an injury to his right knee arising out of and in the course of his employment on December 28, 2004, that the injury caused internal and external harm to the body which required medical services and resulted in disability, with medical evidence supported by objective finding establishing the injury and that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Respondents have controverted the claimant's entitlement to workers' compensation benefits in its entirety.

Dr. Yoa recommended a course of treatment relative to the claimant's December 28, 2004, compensable injury which included surgical treatment. Respondents accommodate the claimant with light duty work within the medical restrictions imposed by Dr. Yoa. When respondents refused to authorize the surgical treatment claimant requested of Dr. Yoa that he be returned to regular duties. In returning to regular duties claimant was in a position to earn overtime working on the front end loader, which he was not permitted to do while on light duty

working in the office. The claimant returned to his regular job duties on or about February 19, 2005, and discharged same through April 22, 2005.

Ark. Code Ann. § 11-9-102 (13) defines “healing period” as, “that period of an injury resulting from an accident.” The healing period ends when the employee is as far restored as the permanent character of the injury will permit. *High Capacity Products v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998). Although the claimant was released at his request to returned to his regular job duties on February 18, 2005, the evidence preponderates the he remained within his healing period relative to the December 28, 2004, compensable right knee injury. Claimant continued to experience symptoms relative to his right knee following his return to regular duties on February 19, 2005, and to apply self-help measures to address same to include borrowed use of a knee brace and wrapping the knee. Claimant was denied access to medical treatment by respondent-carrier following his February 14, 2005, visit to Dr. Yoa.

Ark. Code Ann. §11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee’s injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Whether a medical procedure or device is reasonable and necessary treatment is a question of fact. The evidence preponderates that the claimant’s medical treatment, commencing with the January 17, 2005, emergency room visit, and continuing with the recommendations of Dr. Yoa of February 14, 2005, is reasonably necessary medical treatment in connection with the claimant’s December 28, 2004, compensable right knee injury. Respondents have controverted the claimant’s entitlement to medical treatment.

There is not a dispute regarding the events of April 22, 2005, when the claimant was incarcerated due to an unpaid fine. Claimant remained in jail for twelve (12) days and at time of

his release his employment with respondents had been terminated. Claimant notified appropriated supervisory personnel of respondents of the incarceration and requested that his job be held open. As noted above, while the claimant was discharging his regular employment duties in April 2005, he nonetheless remained within his healing period relative to the compensable December 28, 2004, right knee injury. The evidence in the record reflects that the individual ultimately responsible for replacing/filling the claimant's positions as the front end loader, Tony Beard, the safety manager of respondent-employer, was aware that the claimant had a workers' compensation claim pending relative to the December 28, 2004, right knee injury.

In the instant claim, the claimant suffered a compensable scheduled injury to his right knee on December 28, 2004. At the time respondents terminated the claimant's employment claimant remained within his healing period relative to the compensable injury. Claimant was arrested on April 22, 2005, and released twelve (12) days later on or about May 4, 2005. The evidence reflects that claimant was able to secure new employment approximately three weeks following his release jail. The credible evidence in the record reflects that the claimant was unable to continued discharging his assigned job duties with the new employer, City Electric, due to residuals of his compensable right knee injury.

A claimant with an unscheduled is entitled to temporary total disability during his healing period if he shows by a preponderance of the evidence that he had a total incapacity to earn wages. *Carroll General Hospital v. Green*, 54 Ark. App. 102, 923 S.W.2d 878 (1996). Claimant was within his healing period and totally incapacitated from earning wages from the date of his release from jail until he secured employment with City Electric, and subsequent to the termination of that employment approximately one (1) month later. *Superior Industries v.*

*Thomaston*, 72 Ark. App. 7, 32 S.W.3d 52 (2000).

Ark. Code Ann. §11-9-521 (a) provides, in pertinent part:

An employee who sustains a permanent compensable injury scheduled in this section shall receive, in addition to compensation for temporary total and temporary partial benefits during the healing period or until the employee returns to work, whichever occurs first, weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out in the following schedule . . .

In the instant claim, the claimant's compensable December 28, 2004, injury is scheduled pursuant to Ark. Code Ann. §11-9-521(a). The Arkansas Court of Appeals noted in *Wheeler*

*Construction Co. v. Armstrong, supra*:

In light of Arkansas Code Annotated section 11-9-704(c)(3) and section 35 of Act 796, we must construe Arkansas Code Annotated section 11-9-521(a) using the plain meaning of the language that the General Assembly employed. The statute expressly provides that for scheduled permanent injuries the injured employee is to receive compensation for temporary total or temporary partial during the healing period or until the employee returns to work, which ever occurs first. Conspicuously absent from the statute is any indication that the injured employee show an incapacity to earn wages as a requirement to receiving temporary benefits. This absence is key to any construction of the provision. We hold that the plain meaning of the language employed indicates that an employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during his healing period or until he returns to work regardless of whether he has demonstrated that he is actually incapacitated from earning wages.

*Id* at 152.

Though within his healing period, as of the date of his incarceration on April 22, 2005, claimant had returned to work. The credible evidence does reflects that while in jail claimant continued to wrap his right knee due to residuals of his compensable December 28, 2004, injury. Prior to the claimant's release from jail on or about May 4, 2005, his employment had been terminated by respondents. The credible evidence in the record reflects that supervisory personnel of

respondents were aware that the claimant had a workers' compensation claim pending relative to the December 28, 2004, right knee injury. Likewise, supervisory personnel of respondents were aware that the claimant's release to regular duties by Dr. Yoa on February 18, 2005, was at the request of the claimant. Claimant was within his healing period and not working from the date of his release from jail until he was able to secure employment through the temporary employment agency at City Electric. At the time of the afore claimant had not reached maximum medical improvement/end of his healing period.

The evidence preponderates that claimant was unable to continue his employment with City Electric due to residuals of his compensable injury. Claimant has not worked beyond his approximately one month effort with City Electric and has remained within his healing period. The evidence preponderates that the claimant remains within his healing period relative to his December 28, 2004, compensable scheduled right knee injury and was not returned to work for the three weeks following his release from jail on or about May 4, 2005. As previously noted, while he did obtain a job with City Electric, the claimant was unable to continue in the employment for more than one month due to residuals of the compensable injury.

Pursuant to Ark. Code Ann. §11-9-521(a), and in accordance with *Wheeler*, the claimant has sustained his burden of proof by a preponderance of the evidence that he is entitled to temporary total disability benefits for the period that he was unable work and within his healing period subsequent to May 4, 2005. Respondents have controverted the claimant's entitlement to workers' compensation benefits relative to the December 28, 2004, right knee injury.

#### **AWARD**

Respondents are herein ordered and directed to pay to the claimant temporary total

disability benefits at the weekly compensation benefit rate of \$274.00, for the period commencing May 4, 2005, and continuing through the end of his healing period, excluding the approximately one month period working at City Electric, as a result of his compensable right knee injury of December 28, 2004. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses, to include medical related travel, growing out of the claimant's compensable right knee injury of December 28, 2004.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

---

**Andrew L. Blood, Administrative Law Judge**