

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F405425

ROGER BUNKER, EMPLOYEE	CLAIMANT
GLOVERS TRANSMISSION & REAREND, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED APRIL 21, 2006

Hearing held before the HONORABLE S. DALE DOUTHIT, Administrative Law Judge, on January 30, 2006 in Little Rock, Pulaski County, Arkansas.

Claimant represented by HON. GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondents represented by HON. R. SCOTT MORGAN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On January 30, 2006, the above-captioned case came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on December 29, 2005, and a Prehearing Order was entered on December 29, 2005. A copy of the December 29, 2005, Prehearing Order was marked Commission Exhibit "1" and made a part of the record herein without objection. At the hearing, the parties confirmed their stipulations, issues, and respective contentions were properly set forth in the Prehearing Order.

The parties stipulated the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employer/employee/carrier relationship existed at all relevant times, including January 8, of 2004; and that the claimant sustained a compensable right knee injury on January 8, 2004, for which some benefits were paid.

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The parties agreed the sole issue to be presented for determination was whether the claimant's right knee replacement surgery in August of 2004 was reasonably necessary and related to the claimant's January 8, 2004 compensable injury, and the payment thereof the responsibility of the respondents.

The claimant contended at the hearing that his right knee replacement surgery of August 2004 was reasonably necessary and related to his January 8, 2004 compensable injury, and that the cost thereof should be the respondents' financial responsibility.

The respondents contended at the hearing the claimant's need for a knee replacement is not due to his injury, but due to pre-existing and non-work related problems.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had the opportunity to hear the testimony of the witness and to observe his demeanor, and without giving the benefit of the doubt to either party, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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- 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 his right knee replacement surgery in August of 2004 was reasonable, necessary and related to his admittedly compensable

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injury of January 8, 2004, and the costs associated with the right knee replacement are the financial responsibility of the respondents.

DISCUSSION

A. HISTORY

The claimant, age 56, worked for the respondent employer as mechanic specializing in transmission rebuilding. The claimant testified his job duties required him to do a lot of lifting, squatting, and kneeling on concrete floors. The claimant had worked for the respondent employer approximately seven (7) years prior to January 8, 2004.

The claimant testified as follows regarding the events causing his stipulated compensable injury of January 8, 2004.

A. Well, I was working in an area where they clean the parts and the big machines, and it is wet. And I was hanging onto a piece of equipment, and I was backing up, and fell over something back there. And as I did, I couldn't use my hands because I was hanging onto this, and I turned around as I was falling, and all the weight went down on my knee.

Q. Did your knee come in contact with the floor?

A. Yes.

Q. Okay. And after the circumstance of you striking your knee to the floor, you had to have some medical treatment, did you not?

A. I did. (*T. pg. 12, lns 1-12*)

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After the claimant's stipulated compensable injury, he continued to work, but had arthroscopic right knee surgery on May 24, 2004 to repair a torn medial meniscus. (CX 1, pg. 28-29) Following the May 24, 2004 surgery, the claimant testified the pain, swelling and "giving away" sensation that he had prior to the May 24, 2004 surgery, continued thereafter and actually got worse. (T. pg. 15, lns. 5-9)

With the claimant's right knee getting progressively worse after his January 8, 2004 right knee surgery, the claimant underwent a total right knee replacement on August 18, 2004. The claimant testified that prior to his January 8, 2004 compensable injury he had never been to a doctor for problems with his right knee, had never been diagnosed with arthritis in his right knee, and had never missed work because of right knee problems.

After the January 8, 2004 compensable right knee injury, the claimant was diagnosed by Dr. Scott Bowen with right knee medial compartment osteoarthritis and right medial meniscus tear. (CX-1, pg. 21). The claimant testified his right knee problems have improved since his total knee replacement.

B. Adjudication

The claimant has requested additional medical treatment in the form of a total right knee replacement conducted August 18, 2004. The claimant has alleged the additional medical treatment is reasonable, necessary and related to his January 8, 2004 compensable right knee injury. An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Department of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W. 2d 420 (1994).

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The facts in this claim lead this examiner to find the claimant has proven by a preponderance of the evidence his total right knee replacement was reasonable, necessary and related to his January 8, 2004 admittedly compensable injury. The respondents argue the claimant's pre-existing arthritis was the reason for the knee replacement and not the January 8, 2004 compensable injury. Respondents also seemed to argue "major cause" (*T. pg. 25, lns 17-23*); however, I must point out a major-cause analysis is not applicable. Major cause would apply in a gradual onset injury and in awards of permanent disability benefits, but not when the sole issue is additional medical benefits as requested herein.

The Court of Appeals has held that a compensable injury that aggravates or accelerates a pre-existing condition is sufficient to establish a claimant's entitlement to corrective surgery. For the claimant to prove entitlement for the total right knee replacement, he only needed to show the compensable injury was a factor in the claimant's need for additional surgery. ***Williams v. L & W Janitorial, Inc.***, 85 Ark. App. 1, 145 S.W. 3d 383 (2004). An employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. As such, any medical treatment related to an aggravation is the responsibility of the respondents.

The facts contained in the record of this matter show the claimant's compensable right knee injury was a factor in the need for the claimant's total knee replacement. Dr. Scott Carle prepared a report on August 17, 2004 that stated the following:

"It appears that this client has an aggravation of an underlying osteoarthritis condition to the right knee. The aggravation has occurred to the right knee after a slip-and-fall incident at work in January 2004." (CX-1, pg. 58)

Dr. Carle goes on in his report to attribute the fall to an aggravation of the claimant's

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medial meniscus, and attempts to attribute claimant's need for knee replacement to his osteoarthritis and obesity. (CX-1, pg. 58) However, Dr. Carle again makes the mistake of seeming to utilize the major-cause analysis. Dr. Carle states:

"The major need for consideration of a joint replacement at this time would be apportioned to idiopathic factors, such as the underlying osteoarthritis and extreme obesity." Emphasis added. (CX-1, pg. 58)

As stated earlier, the major cause analysis is not appropriate here. The claimant need only to prove by a preponderance of the evidence that the compensable injury was a factor in his need for the total knee replacement.

This examiner found the claimant to be a credible witness. The witness credibly testified that prior to his compensable right knee injury of January 8, 2004, he had never been to a doctor for problems with his right knee, had never missed work because of problems with his right knee, had never had a diagnosis of arthritis of his right knee, and had never previously injured his right knee. For this examiner to say the claimant's acute right knee compensable injury of January 8, 2004, played a zero factor in his need for a total right knee replacement would be to throw out all common sense and logic.

Even though Dr. Carle misapplies the major cause analysis, Dr. Carle does seem to ultimately conclude that the claimant's compensable injury is a factor in the need for the total knee replacement.

"It appears that this compensable injury is combining with a pre-existing condition that is the result of the natural process of aging and/or gravitational forces that are prolonging his current disability and need for treatment." (CX-1, pg. 59)

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Dr. Scott Bowen recommended the total knee replacement in his 6/22/04 report (*CX-1*, *pg. 38*), and the record contains sufficient evidence that shows the claimant has proven by a preponderance of the evidence his total right knee replacement in August 2004 was reasonable, necessary and related to his January 8, 2004 compensable injury. Accordingly, I find the claimant's total right knee replacement to be the responsibility of the respondents.

AWARD

_____The claimant has proven by a preponderance of the evidence his total right knee replacement in August 2004 was reasonable, necessary, and related to his January 8, 2004 compensable injury and is the financial responsibility of the respondents. 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.

S. DALE DOUTHIT
Administrative Law Judge

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