

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507292

JOSHUA CHAFFIN	CLAIMANT
WHIRLPOOL CORPORATION	RESPONDENT
GALLAGHER BASSETT SERVICES, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 31, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by ADRIENNE KINCAID MURPHY, Attorney, Fayetteville, Arkansas.

Respondents represented by TOM HARPER, JR., Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on March 23, 2006, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on January 11, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On June 24, 2005, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$459.00 for temporary total disability and \$344.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's left knee injury on June 24, 2005.

2. Related medical.

In regard to the foregoing issues the claimant contends that the employee/employer/carrier relationship existed among the above captioned parties at all times relevant to this claim, specifically the time at which the injury occurred. The claimant contends that he was acting within the scope of his employment in maintenance for Whirlpool Corporation and was furthering the interests of his employer when the injury occurred. The claimant also contends that he is entitled to all reasonable and necessary medical treatment he incurred after falling at work and dislocating his left knee. The claimant received treatment at, including but not limited to, St. Edward's Mercy Medical Center Emergency Room and Cooper Clinic, PA. The claimant will contend this treatment was performed by authorized medical providers, and that it was reasonable and necessary and in connection with his compensable injury. As such, the claimant will contend that he is entitled to full reimbursement for any out of pocket expenses, satisfaction of all subrogation interests, satisfaction of all outstanding medical bills and mileage. Finally, because the respondents have controverted the claimant's entitlement to additional medical treatment, the claimant will contend that he is entitled to appropriate attorney's fees for all present and future benefits.

In regard to the foregoing issues the respondents contend that the claimant did not receive a compensable injury to his left knee because the injury occurred at a time when employment services were not being performed for whirlpool.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted medical information marked Claimant's Exhibit No. 1. The respondents submitted the deposition of the claimant marked Respondents' Exhibit No. 1, documentary evidence marked Respondents' Exhibit No. 2 and a recorded telephone statement marked Respondents' Exhibit No. 3. All these exhibits were admitted without objections.

DISCUSSION

The claimant testified that he had been working for the respondent for almost five years and currently holds the position of an electrician's apprentice.

The claimant testified that on the night of June 24, 2005, he was in department 255 talking with Travis Dunn when he got a call to return to work. The claimant testified that he turned to walk to his buggy and fell. The claimant testified that Travis jumped down and saw his knee, then ran to get Mitch Parker, an ERT member. The claimant testified that when Mr. Parker came to the department he had with him Gary Gist, a supervisor, and that they helped him up and then had him sit down. The claimant testified that when he sat down his knee started hurting a lot more so they helped him stand up and he waited there until the nurse arrived.

The claimant was asked what he had received the call for and the claimant testified that it could have been one of two things but that he really did not remember. The claimant explained that he could have gotten a call to help relieve one of the dispatchers so they could take a break or he could have been called by his journeymen because they had been working on electric panels in the shop and he could have been called to come help with one of the panels since he had already finished his panel. The claimant testified that at his deposition he forgot or it did not occur to him until after the deposition was over with that he may have been called to relieve a dispatcher.

The claimant testified that he was taken to the nurse's station at which time he reported that he was on break, fell and got hurt. The claimant testified that the plant nurse called Ms. Duplantis and he was told that before he could return to work he had to be cleared by the company doctor. The claimant testified that from the nurse's station he went to put his tools up and that a journeyman came, picked him up from the nurse's station and took him to the shop so he could put his tools in his locker. The claimant testified that he started to walk out, took about twenty steps and could not walk any further so he just stood there until a journeyman came by, picked him up and gave him a ride to the back door.

The claimant testified that when he got to the emergency room a leg brace was put on his left knee and he was given crutches as well as a shot in his hip for pain. The claimant testified that he

was told to return on Monday for an appointment with the orthopedic doctor, Dr. Evans. The claimant testified that he went to physical therapy three times and that now he has been released by his doctors.

The claimant testified that on his job the days will vary depending on what is broken and needs to be repaired. The claimant testified that the night he injured his knee he was waiting on a call noting that he was on standby. The claimant testified that he was on the clock because when he walked into the plant, he clocked in and he stayed on the clock until he left the plant. The claimant testified that it is normal to leave the maintenance shop noting that he can go anywhere in the plant but he must always be listening to his radio for a call. The claimant stated that when he is on break or if he is eating lunch and he gets a call it is expected that he drop everything and go to his call. The claimant agreed that when he was talking to Travis the night of his injury, he was ready to go to work anytime. The claimant testified that when he talked with Scott Horton about his accident the following Monday, Mr. Horton already knew all about it. The claimant explained that Mr. Horton is the health and safety supervisor.

On cross examination, the claimant testified that when he was talking to Travis on June 24, 2005, he was not performing any electrical duties. The claimant testified that when he was talking to Travis he was some fifteen to twenty feet away from him and that Travis had just got a call to go pick up a pallet of product. The claimant explained that he carries a radio with him all the time

but it is loud in the plant and that Travis was too far away to hear if he had gotten a call. The claimant testified that in a statement which he gave over the phone to Misty Heavner, he indicated that he was on standby waiting for a call at the time of his injury. The claimant testified that after he got the call he was going back to work but cannot remember what the call was for. The claimant agreed that when he first reported his injury, he did not mention that he had received a call. The claimant testified that when he talked to Scott Horton he told him that he was returning to work. The claimant testified that he does remember telling Mr. Horton that he was not working on an electrical panel or on electrical equipment. The claimant agreed that in his deposition, he stated that he believed that his accident was compensable because he was in the respondent's plant, on the clock, at the time that his accident happened. The claimant testified that after his accident the nurse clocked him out but that the respondent paid him for the whole day. The claimant agreed that he told the nurse that he was on break because he was not performing any duties at that time other than being on standby. The claimant testified that when he turned his knee popped out or dislocated and that it popped back in on its own.

On redirect examination, the claimant testified that he does not keep the volume of his radio turned up real loud because he does not want to disturb other people. The claimant testified that he varies the volume on his radio because some departments are a lot louder than others. The claimant testified that he keeps his

radio close to his ear and he does not know if anyone else can hear it or not.

Scott Horton testified that he is employed by the respondent as a technical coordinator for environmental health, safety and medical workers' compensation. Mr. Horton testified that he and Ms. Duplantis worked together administrating workers' compensation claims. Mr. Horton testified that his Day Planner calendar entries of Monday, June 27, 2005, are a result of a conversation which he had with the claimant. Mr. Horton testified that at the time these notes were taken Carolyn Dunn was also present and that Ms. Dunn is a second shift committee person with the union. Mr. Horton testified that Ms. Dunn had brought the claimant by that afternoon to visit with him. Mr. Horton stated that he did not know the claimant until this time and that as the claimant told him about the events of his accident he took notes on his Day Planner. Mr. Horton testified that the claimant indicated that he was on break visiting with another employee and that when he turned to leave his knee popped. Mr. Horton testified that he told the claimant that it sounded like there was not work activity involved at the time of his injury. This witness testified that the claimant then indicated that he was not sure if his knee popped at that time or if the injury occurred when he hit the floor and when Mr. Horton asked for clarification as to why he hit the floor, the claimant indicated that he did not slip or trip on anything that he was aware of and kind of indicated that there was no work involved. Mr. Horton testified that he asked the claimant if he was doing any

work at the time of his fall and the claimant responded "no." Mr. Horton was asked if the claimant told him that he had been called or paged on his radio to go back to the electrical shop or to replace the dispatcher. Mr. Horton responded, "No." Mr. Horton testified that the claimant told him that he just turned and his knee popped but did not mention anything about being paged.

On cross examination, Mr. Horton testified that he had heard about the claimant's injury before he interviewed the claimant in his office. This witness testified that he was not in the plant at the time of the claimant's accident and agreed that the claimant had not told him one way or the other that when he turned to leave that he had gotten a call.

In the claimant's deposition, he testified that when he was hurt he was visiting a friend. The claimant testified that he was talking to Travis when he got a call and said, "well, I've got to go." As he turned about fifteen degrees and started to walk off he did not know what happened, he just hit the ground. The claimant testified that he has never had problems with his knee before but now understands that he had a patella dislocation. The claimant testified that at the time of the accident he thought he had broken his leg because he heard a loud pop and something was sticking outside of his pants. The claimant again testified that at the time he was talking to a friend, got a call and as he turned to walk off he fell. The claimant was asked who called him and he responded that he was called to follow his journeymen to work. The claimant explained that the dispatcher would have called the

journeyman and whenever the journeyman is called to a work site he has to go be with him. The claimant testified that the dispatcher told him to come to the shop that they had a panel to work on or rebuild. The claimant testified that after his fall, Travis ran and got an ERT member, Mitch Parker, and when he arrived they called the nurse. The claimant testified that the nurse came and picked him up in a buggy, took him to the nurse's station and asked him a couple of questions before she called her boss. The claimant testified that he was told that he would have to drive himself to the hospital if he wanted to go but he would have to be cleared through the company doctor before he could come back to work. The claimant testified that at the ER x-rays were taken and he was put on crutches, given a knee brace as well as referred to Dr. Evans for an appointment on Monday. The claimant testified that he was off work seven working days and had to be cleared by the company doctor before he could return to work. The claimant testified that Dr. Evans had him go through physical therapy, noting that he did not have to undergo any type of surgery. The claimant testified that after his accident he was laying on the floor and he heard his knee pop back into place. The claimant testified that he underwent three physical therapy sessions before he was released to return to work. The claimant testified that it is his understanding that he is totally cured and not having any problems. The claimant testified that he was given a series of strengthening exercises which he still does. The claimant was asked about his work and he explained that some days he may just sit around all day but other

days the work might be steady and they do not even have time to take a break. The claimant testified that he was not doing anything electrical at the time he got hurt except that he had been called to go meet his boss. The claimant testified that he did not trip over anything on the floor but that he might have slipped since they waxed the floors. The claimant was asked could his accident have happened anywhere and the claimant responded, "Yes." The claimant testified that he had no idea why his knee popped out of place. The claimant agreed that it was fair to say that no one knows what caused his accident to happen.

On cross examination, the claimant was asked that on the day of his injury when he was talking to Travis was he ready to do electrical work at any point and the claimant responded "yes."

The medical records set forth that the claimant was seen at St. Edwards Mercy Medical Center ER on June 24, 2005, complaining of pain to his left knee after a fall at work. The note set forth that the claimant reports that his left knee cap moved over then he pushed it back in. The claimant was administered medications as well as given a knee immobilizer and crutches. X-rays taken of the claimant's left knee were negative and his final diagnosis was that of patella dislocation. These same ER records set forth that Dr. Evans was consulted and a follow up with Dr. Evans was encouraged. Dr. Evans saw the claimant on July 5, 2005, and writes that the claimant reports that he dislocated his left patella at work and fell, he has had some swelling and his knee is painful to bend. Dr. Evans notes that he recommended a knee immobilizer as well as

the use of crutches and physical therapy. The physical therapist, Jason Lairamore, writes on August 18, 2005, that the claimant has had a total of three physical therapy visits and has not been seen in physical therapy since July 18, 2005, at which time he had no complaints and reported a return to full activities. The physical therapist writes that the claimant was doing well with physical therapy as evidenced by his steady decrease in pain complaints and reported increase in function. The claimant was discharged from physical therapy at that time.

The respondent's plant nurse writes on June 24, 2005, that she has seen the claimant in the nurse's station for his complaints of sharp pain to his left leg. The nurse notes swelling was noted in the patella area.

After a complete review of this entire record, I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury on June 24, 2006, while working for the respondent. It has been argued that at the time the claimant's left knee popped out of place and he fell, he was not performing employment services. The claimant has testified that he had been on a break visiting with a friend when he received a call to return to his work station or to relieve a dispatcher. The claimant testified that he carries a radio with him at all times and is on call at all times and is to respond immediately when called to perform whatever work or repair is necessary. The claimant testified that while visiting with his friend he did receive a call to return to his work station at which time he turned to leave and

his knee popped out of place and he fell. The claimant was on the clock at the time of his injury and he certainly was within the space and bounds of his employment. It is also noted that the claimant was responding to a call and was beginning his route to advance to the area he had been summoned to, therefore, he was in the act of promoting his employer's interest. Recent Arkansas cases indicate that even if an employee has been on break or on personal business but is now in route to advance the employer's interest, the Courts have determined that injuries occurring at this time are compensable. See Southern Arkansas Development Council, Inc. v. Tidwell, ___ Ark. App. ___, ___ S.W. 3d ___, (March 22, 2006) and Wal-Mart Stores, Inc. v. Sans, 80 Ark. App. 51, 91 S.W. 3d 93, (2002). Therefore, the respondents should pay for the medical treatment for the cost of his claimant's compensable injury.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On June 24, 2005, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$459.00 for temporary total disability and \$344.00 for permanent partial disability.
4. The claimant has proven by a preponderance of the evidence that he sustained a compensable injury while performing employment

services for the respondent on June 24, 2005. See discussion above.

5. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable left knee injury.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable left knee injury while working for the respondent on June 24, 2005.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable left knee injury.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE