

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509976

DOYLE HOWARD	CLAIMANT
SPRINGDALE SCHOOL DISTRICT SELF INSURED	RESPONDENT
ARKANSAS SCHOOL BOARD ASSOCIATION WORKERS' COMPENSATION TRUST, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED JUNE 16, 2006

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in
Springdale, Washington County, Arkansas.

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville,
Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 10, 2006, in Springdale, Arkansas. A pre-hearing order was entered in this case on November 15, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the parties announced that they had not agreed on the appropriate weekly compensation rates. However, the claimant also announced that he was withdrawing the issue of his entitlement to temporary total disability or temporary partial disability benefits. Thus, neither a stipulation nor a finding on the appropriate compensation rates is necessary, at the present time. Certain clerical corrections were also made to the pre-hearing order by inserting the appropriate gender pronouns. A copy

of the pre-hearing order with these amendments noted thereon, was been made Commission's Exhibit No. 1 to the hearing.

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

1. On January 18, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. On January 18, 2005, the claimant sustained compensable injuries to his right hip, right knee, and right foot.
3. There is no dispute over the claimant's entitlement to medical services for his right hip, right knee, and right foot injuries.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant also sustained a compensable injury to his left knee in the accident on January 18, 2005.
2. The claimant's entitlement to medical services for his left knee difficulties.

In regard to these issues, the claimant contends:

"Claimant was injured on February 1, 2004 (approximate date). His hips, right foot, right knee, and left knee were injured when he fell down the stairs of a school bus to the ground."

In regard to these issues, the respondents contend:

"The respondents contend that all known medical expenses have been paid to or on behalf of the claimant."

DISCUSSION

The central issue is the question of whether the claimant also sustained a “compensable injury” to his left knee in the employment related accident or fall on January 18, 2005. The burden rests upon the claimant to prove all of the elements required by the Act for a “compensable injury”.

The first of these elements are found in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant prove by medical evidence the actual existence of the physical injury or condition alleged to be compensable. Further, it requires that the actual existence of this physical injury or condition must be supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

Further, the claimant must also prove that any medically established and objectively supported physical injury or condition satisfies the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) That the physical injury or condition arose out of and occurred in the course of the employment;
- (2) That the physical injury or condition was caused by a “specific incident”;
- (3) That the physical injury or condition is identifiable by time and place of occurrence;
- (4) That the physical injury or condition resulted in external or internal physical harm to the claimant’s body;
- (5) That the physical injury or condition required medical services or resulted in disability.

After consideration of the medical evidence presented, it is my opinion that the claimant has failed to satisfy the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). Specifically, he has failed to “establish” by credible medical evidence, which is supported by objective findings, the actual existence of any physical injury or condition involving his left knee.

The medical reports and records of Dr. Konstantin Berestnev failed to “establish” the actual existence of any physical injury or condition involving the claimant’s left knee. The only mention in his reports and records of the claimant’s left knee is found in his report of January 20, 2005. In this report he notes in passing: “left knee ok, but stiff.” Although Dr. Berestnev’s diagnoses the existence of various physical injuries and conditions involving the claimant’s lower back, right hip, right knee, and right foot, he does not diagnose any injury or defect involving the claimant’s left knee.

An injury or defect involving the claimant’s left knee is found in the reports and records of Jon Lee, a physical therapist, to whom Dr. Berestnev referred the claimant for physical therapy. In his handwritten evaluation, dated February 6, 2005, Mr. Lee gives an assessment of “left MCL strain”. In his narrative report of the same date, he states:

“Assessment: The patient demonstrates signs consistent with MCL strain in the left knee.”

However, it is my opinion that Mr. Lee’s statement that the claimant was experiencing an MCL strain of his left knee is actually a typographical error, and that Mr. Lee intended to

indicate that the claimant was experiencing a right MCL strain. The records of Dr. Berestnev show that one of the reasons for his referral of the claimant for physical therapy was to treat a MCL strain of the claimant's right knee. In both the handwritten and the narrative reports of February 7, 2005, Mr. Lee only recorded symptoms and complaints involving the claimant's right knee. He noted absolutely no complaints or symptoms involving the claimant's left knee in either his "subjective report of symptoms" or his "objective exam".

There is also no mention of the presence of any physical injury or condition that involved the claimant's left knee in any of the subsequent medical reports and records that have been introduced. In fact, these records fail to even note any complaints by the claimant with his left knee.

On or about March 6, 2005, the claimant was seen and admitted at St. Mary's Rogers Memorial Hospital for a sore area underneath his tongue. No mention is made of any complaints, injury, or condition involving his left knee.

On April 7, 2005, the claimant was seen and treated by Chris Miller, a physical therapist, at St. Mary's Hospital for complaints of low back pain. In the initial evaluation report, Mr. Miller recorded the prior injury to the claimant's right hip that occurred on January 18, 2005. He also noted continuing complaints with the right hip. He even recorded a second injury that occurred approximately two and a half weeks prior to the claimant's visit, when the claimant hit a bump in the road while driving a

school bus with resulting onset of low back and left hip pain. However, there is no record that the claimant made any complaints involving his left knee or gave any history of a prior injury to this portion of his body. To the contrary, a physical examination performed on the claimant's knees, at that time, was found to show no abnormalities in extension or flexion of either knees. Throughout the claimant's subsequent three week period of physical therapy, April 7, 2005 through April 26, 2005, no mention was made of any complaints involving the claimant's left knee or the observation of any defects involving this portion of the claimant's anatomy.

On May 1, 2005, the claimant was again seen at St. Mary's Rogers Memorial Hospital. At that time he was admitted for complaints in the form of left hip pain. The claimant was apparently hospitalized for these complaints from May 1, 2005 through May 10, 2005. Again, no mention was made of any complaints of symptoms involving the claimant's left knee.

On September 15, 2005, the claimant was seen by Dr. Michael Robinson, who is apparently the claimant's family physician. In his report of this visit, Dr. Robinson recorded complaints involving the claimant's back and hip into his buttocks and a history that these complaints began with the employment related fall on January 18, 2005. However, no mention is made of any complaints or symptoms involving the claimant's left knee, nor does Dr. Robinson diagnose the existence of any physical injury or condition to this portion of the claimant's body.

Again, the claimant was treated with physical therapy, at the request of Dr. Robinson. Again, there is no mention of any injury or condition involving the claimant's left knee. The physical therapy reports and the subsequent records of Dr. Robinson all fail to note any complaints involving the claimant's left knee or the observation of any abnormalities on physical examinations or testing. None of these records diagnosed any injury or defect involving the claimant's left knee.

On October 11, 2005, the claimant was evaluated, at Dr. Robinson's request, by Dr. Kelly Danks (a neurosurgeon). In his report of that date, Dr. Danks mentioned no symptoms or complaints involving the claimant's left knee. Further, on his physical examination, he noted no abnormalities affecting this portion of the claimant's body. The same holds true for all the subsequent reports by Dr. Danks.

Even if the claimant had "established" by medical evidence which was supported by "objective findings", the actual existence of any physical injury or condition involving his left knee, the greater weight of the credible evidence would fail to show any causal relationship between such an injury or condition and the claimant's employment related fall on January 18, 2005. Although the claimant testified that he experienced immediate pain in both knees contemporaneous with the fall and that he complained of such difficulties to his subsequent treating physicians, this testimony is clearly inconsistent with and contradicted by the other more credible evidence presented. As a result, it is clearly lacking in

credibility.

The initial AR-N which was signed by the claimant on January 19, 2005, makes no mention of any injury to or difficulties with the claimant's left knee. The claimant attempts to explain this failure by testifying that the individual completing this form was in a hurry and that even though he signed the form, he did not actually read it.

The claimant acknowledges that the reports and records of Dr. Berestnev fails to record a history of any injury or difficulties involving his left knee. However, he testified that he did advise Dr. Berestnev of these difficulties. His explanation for Dr. Berestnev's failure to record these difficulties was due to Dr. Berestnev's unfamiliarity with the English language.

The claimant also testified that he advised his family physician, Dr. Robinson, of the injury and difficulties with his left knee. However, no such injury or difficulties are noted by Dr. Robinson. The claimant offers no explanation for Dr. Robinson's failure to record a history of a left knee injury and left knee difficulties on January 18, 2005. Clearly, Dr. Robinson is familiar with the English language.

In light of the evidence presented, the claimant has failed to prove by the credible evidence the actual existence of any physical injury to his left knee and has clearly failed to prove the occurrence of a physical injury to this portion of his body that was caused by his January 18, 2005 employment related fall. Thus, the claimant has failed to satisfy the requirements for proving a

“compensable injury” to this portion of his body that are contained in both Ark. Code Ann. §11-9-102(4)(D) and §11-9-102(4)(A)(i).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On January 18, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On January 18, 2005, the claimant sustained compensable injuries to his right hip, right knee, and right foot.
4. There is no dispute, at the present time, over the claimant’s entitlement to reasonably necessary medical services for his compensable right hip, right knee, and right foot injuries. All such services have apparently been provided to date.
5. The claimant has failed to prove that he also sustained a compensable injury to his left knee in the employment related accident or fall on January 18, 2005. Specifically, the claimant has failed to establish by credible medical evidence, which is supported by objective findings, the actual existence of any physical injury to his left knee. He also failed to prove by the greater weight of the credible evidence the existence of a causal relationship between any alleged difficulties with his left knee and the specific employment related incident or accident on January 18, 2005. Thus, he has

failed to satisfy the statutory requirements for a “compensable injury” found in Ark. Code Ann. §11-9-102(4)(D) and §11-9-102(4)(A)(i).

6. The respondents have denied the occurrence of any compensable injury to the claimant’s left knee and have controverted his entitlement to any benefits attributable to this alleged injury.

ORDER

Based upon my foregoing and conclusions, I have no alternative but to deny and dismiss all claims for benefits attributable to a compensable injury to the claimant’s left knee on January 18, 2005.

The claimant remains entitled to appropriate benefits provided by the Act for his admitted compensable injuries to his right hip, right knee, and right foot.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge