

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110461

JIMMY JENNINGS, EMPLOYEE	CLAIMANT
COOPER TIRE & RUBBER CO., SELF-INSURED EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED MAY 15, 2006

Hearing before Administrative Law Judge J. Mark White on February 23, 2006, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Floyd Thomas, Attorney at Law, El Dorado, Arkansas.

Respondents represented by Mr. Michael Dennis, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

On February 23, 2006, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on October 31, 2005, and a Prehearing Order was entered that same day. A copy of the October 31, 2005, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier

relationship existed at all relevant times, including August 27, 2001, and June, 2003; that on August 27, 2001, the claimant sustained a compensable injury to his left knee; that respondents accepted the August 27, 2001, left-knee injury as compensable and paid benefits; and that on July 22, 2003, the Commission granted the claimant a change of physician to Dr. Kenneth Gati.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury to his right knee in June, 2003; whether additional medical treatment is reasonably necessary in connection with the August 27, 2001, compensable injury; whether additional medical treatment is reasonably necessary in connection with the June, 2003, injury if it is found to be compensable; and controversion and attorney's fees.

The claimant contends that he sustained a compensable injury to his right knee in June, 2003; and that additional medical treatment, specifically the treatment and bilateral knee surgery recommended by Dr. Gati, is reasonably necessary in connection with both of his compensable injuries.

The respondents contend that the claimant has received all reasonable and necessary medical treatment; that any further treatment which has been prescribed is neither reasonable nor necessary or is not related to a compensable injury; and that the claimant did not sustain a compensable right-knee injury in June, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

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 he sustained an injury to his right knee causing internal physical harm to the body requiring medical services; and that the existence and extent of his injury is established by medical evidence supported by objective findings.
4. The claimant has proven by a preponderance of the evidence that he sustained an injury to his right knee arising out of and in the course of his employment; and that his injury was caused by a specific incident identifiable by time and place of occurrence.
5. The claimant has therefore proven by a preponderance of the evidence that

he sustained a compensable injury to his right knee.

6. The claimant has proven by a preponderance of the evidence that additional medical treatment, including arthroscopic surgery, is reasonably necessary in connection with his compensable left knee injury.
7. The claimant has proven by a preponderance of the evidence that additional medical treatment, including arthroscopic surgery, is reasonably necessary in connection with his compensable right knee injury.
8. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The claimant works for the respondent-employer as a press operator. On August 27, 2001, he sustained a compensable injury to his left knee when he stepped wrong and twisted it. The respondents accepted the left knee injury as compensable and paid benefits. He came under the care of Dr. D'Orsay Bryant, who first saw him September 5. That visit appears to have been focused on pain in the claimant's thigh and hip, rather than his knee, and Dr. Bryant diagnosed a pulled hamstring arising out of the August 27 accident. The claimant returned on September 10, telling Dr. Bryant that he had also injured his left knee.

On October 24, the claimant reported to Dr. Bryant complaining of *right* knee pain. Dr. Bryant ordered an MRI of the right knee, performed October 26, which revealed a small joint effusion and mild cartilage thinning. On November 5, Dr. Bryant released the claimant to full duty work.

The claimant returned to Dr. Bryant on January 31, 2002, complaining of “persistent, severe left knee pain.” An MRI performed February 7 was normal. Conservative treatment failed to alleviate the claimant’s symptoms, and Dr. Bryant performed surgery on November 15, 2002. The claimant testified that the surgery was of no benefit, that as of the hearing his knee was weak, and that he was still experiencing pain and swelling daily.

However, Dr. Bryant’s notes reflect that the claimant reported improvement in his knee immediately following the surgery. On December 17, the claimant reported “doing ‘just fine’” and that his “knee pain has been completely resolved.” Dr. Bryant released him from care with an anatomical impairment rating of 2% to the left lower extremity. The claimant returned on January 14, 2003, with renewed left knee pain:

He stated that he has been working very well full duty, but he stated that he simply woke up recently with a deep pain in his knee. He was doing very well prior to the episode when he woke up with the knee pain. He does have a job which requires standing on concrete.

Dr. Bryant treated him conservatively over the following months, and his notes imply that the claimant's continuing left knee problems varied with his work schedule, and that the problems were due to his work environment. Dr. Bryant recorded in his notes of April 24:

The patient comes in today with a complaint of increasingly severe left knee pain. He stated that ever since his return to work he has been standing on the concrete, and he has had increasing difficulty in performing his job. He stated that the nature of his job is responsible for his pain. He stated that he works on a mold where he has to flip a bar, and he has to use his left knee and lower extremity to push the bar.

The claimant next returned to Dr. Bryant on June 2, 2003. Dr. Bryant quoted him as saying that his left knee was "doing well," but the claimant related that he had sustained an injury to his *right* knee at work on May 30. Dr. Bryant diagnosed a right knee sprain and treated him conservatively. The claimant returned on July 10 complaining of bilateral knee pain.

Dissatisfied with Dr. Bryant's treatment, the claimant requested a change of physician from the Commission. One was granted to Dr. Kenneth Gati, and on July 28, the claimant saw Dr. Gati's partner, Dr. Dwayne Daniels. Dr. Daniels noted complaints of bilateral knee pain and swelling, though Dr. Daniels himself observed no swelling. Dr. Gati saw him on August 6. He noted mild crepitus in both knees but no effusion or swelling. Dr. Gati ordered MRI exams of both knees, which revealed

degenerative changes in the left knee, and chondromalacia of the patellofemoral joints in both knees "secondary to tight lateral retinaculum." He recommended conservative treatment, but he added, "he may require at some point in the future lateral retinacular release." When conservative treatment failed to alleviate the claimant's symptoms, Dr. Gati recommended on October 8, 2003, that the claimant undergo arthroscopic surgery on both knees to release the lateral retinaculum. The respondents denied the proposed surgery, and Dr. Gati then recommended additional medication.

The claimant acknowledged in his testimony undergoing right knee surgery in 1987, and the records of that surgery were admitted into evidence. The claimant testified that he had no residual problems from that surgery, and there is no evidence in the record to indicate otherwise.

The record reflects two separate accounts from the claimant of how his right knee accident of June 2003 occurred. In his deposition, the claimant described the accident as follows:

It was in June of -- I can't remember the exact day. But it was in June. I was running a press where you have to use an airgun to pull your parts off.

Q Uh-huh.

A. And on the back side of the press to get the last two parts off, you got one foot on the platform, another

foot on the step. And when I was pulling on the gun, it was kind of hard to pull, which that's -- that's normal. And then all of a sudden, the part just shot off, and I lost my balance. And when I hit down on the floor, my knee -- it buckled. I almost fell.

Q Was there anything about the -- well, I mean, was there anything unusual about the part coming out the way it did?

A No.

Q Is that --

A That's normal.

Q That sometimes it comes out rather quickly?

A You -- well, some days -- well, some heat, as we, you know, call them, they'll just come right on off. And then some of them you got to struggle and pull with sometimes.

Q It's not an unheard of occurrence then?

A No. Huh-uh.

Q And then you say you -- now, which knee did you have on the platform -- or which foot did you have on the platform and which foot did you have on the stairs?

A My left foot was on the platform. My right one was on the step.

Q Okay. And when it came --

A When the part -- when I lost my balance --

Q Uh-huh.

A -- it was like my first foot -- leg when I moved was my left leg hit the floor was the first one that hit the floor.

Q Okay.

A And like I say, when it -- it was fast and quick, and I was trying to keep from falling, you know, and hurting myself. It just happened so quick. But, you know, -- and like I say, when my foot hit the floor and my right -- it buckled and it like buckled. And if you was 3 or 4 feet away from me, I'm pretty sure you could have heard it. I felt a hard pop. And I want to say you could almost hear it.

Q Did your right foot go to the floor or did it stay on the step?

A No. It went to the floor.

Q Okay. So both of your -- at this -- at the point that your right knee buckled on you, both feet were on the floor; is that correct?

A Well, my right one was on the floor, and my left one was on its way. Because like I say, it happened so fast and so quick because when the part shot off, I'm going straight backwards and I'm going -- you know, trying to catch my balance to keep from falling. And I went to turn to step down.

Q Okay. So your right foot hit the floor first and your left foot then hit afterwards?

A Uh-huh.

Q Okay. I'm starting to get the picture now.

A All my weight -- when I started to fall, all of my weight was going to the right.

Q Okay. Is there any kind of a mat or anything on the floor there --

A No.

Q -- where you come off of that step?

A No.

Q Just a regular concrete floor?

A Yes, sir.

Q Anything unusual about the floor that you think caused the knee problem?

A No.

Q It was just all the way coming down on your knee in a funny position?

A Uh-huh. Yes.

However, at the hearing the claimant described the accident as follows:

I was working a job-- It's a gun job where you have to put the airgun onto the (inaudible) bar to bull the parts off with. They're all rubber partes. And when I pulled the parts off-- I had loaded the rubber into the press that day, stepped down like I come back down the ladder. I think there was some oil or something on the floor. And when I stepped in it, I slipped.

Q What happened to your knee at that time?

A It was like my knee-- It was like it buckled.

In his deposition testimony, the claimant said nothing of slipping on oil. It should be noted that in his deposition testimony, the claimant initially said his left foot hit the floor first, but he later said his right foot hit first.

The medical records corroborate both these accounts of the injury. Dr. Bryant quoted the claimant as saying "he slipped off a step and his knee buckled" and "he twisted and jarred his knee." Dr. Gati, however, quoted the claimant as saying "he slipped on some oil and sustained a buckling, twisting type injury to his right knee."

II. Adjudication

A. Compensability

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the

existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

Though the parties have stipulated to the compensability of the claimant's left knee injury, the respondents contest the compensability of the alleged June 2003 right knee injury. The existence of a new injury is unquestionably established by objective findings. The right-knee MRI performed August 8, 2003, revealed chondromalacia of the patellofemoral joint, while the right-knee MRI performed in October 2001 made no such finding. Dr. Gati has implicitly blamed this chondromalacia for the claimant's complaints of pain, and this is the condition which his proposed surgery would remedy. Given this evidence, and the other medical evidence of record, I find that the claimant has proven by a preponderance of the evidence that he sustained an injury to his right knee causing internal physical harm to the body requiring medical services; and that the existence and extent of his right-knee injury is established by medical evidence supported by objective findings.

The claimant has offered two separate accounts of how his right-knee injury

occurred. Though the accounts are distinct, they are not necessarily contradictory in their key details. I find it noteworthy that both accounts are reflected in the medical records – the claimant’s deposition testimony, wherein he omitted any mention of slipping in oil, came some nine months *after* his visit with Dr. Gati in which he did relate slipping on oil. On balance, I find it more likely that not that the claimant is simply an inarticulate witness and that he did in fact sustain an injury to his right knee in late May/early June while stepping down from a platform at his work station.

I find that the claimant has proven by a preponderance of the evidence that he sustained an injury to his right knee arising out of and in the course of his employment; and that his injury was caused by a specific incident identifiable by time and place of occurrence. The claimant has proven every element of a compensable injury; I therefore conclude that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right knee.

B. Additional Medical Treatment

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. Ark. Code Ann. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

The claimant has consistently complained of pain and problems in his left knee since his return to work, and in his right knee since his compensable injury. Dr. Bryant never released the claimant from care for either knee. Dr. Gati has recommended additional treatment to include surgery, and there is no opposing medical opinion in the record. There is no evidence the claimant had any left knee problems prior to his compensable injury, and the prior right-knee problems are too distant in the past to have had any bearing on his present problems. Therefore, I find that the claimant has proven by a preponderance of the evidence that additional medical treatment, including arthroscopic surgery, is reasonably necessary in connection with both his compensable left knee injury and his compensable right knee injury.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right knee; and that additional medical treatment, including arthroscopic surgery, is reasonably necessary in connection

with both of his compensable knee injuries. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. § 11-9-715. Therefore, no attorney's fees are awarded herein.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge