

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506639

FRANCISCO RODRIQUEZ	CLAIMANT
SUPERIOR INDUSTRIES	RESPONDENT
CROCKETT ADJUSTMENT, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 7, 2006

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

Claimant represented by BRENT STERLING, 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 January 30,
2006, in Springdale, Arkansas. A pre-hearing order was entered in
this case on November 21, 2005. This pre-hearing order set out the
various stipulations offered by the parties and outlined the issues
to be litigated and resolved at the present time.

By agreement of the parties, this pre-hearing order was
clarified to reflect the appropriate stipulated weekly compensation
rates and to change the second issue regarding temporary total
disability. A copy of this pre-hearing order with those amendments
noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. On February 28, 2005, the relationship of employee-self
insured employer-TPA existed between the parties.
2. The appropriate weekly compensation rates are \$319.00 for

total disability and \$239.00 for permanent partial disability.

3. On February 28, 2005, the claimant sustained a compensable injury to his right hip.
4. There is no dispute, at present, over the payment of medical expenses incurred for the compensable hip injury and all such benefits have or are being paid.
5. There was no temporary disability benefits paid for the compensable hip injury and no such benefits are sought at the present time.
6. The respondents deny the occurrence of any compensable injury to the claimant's right knee and controvert any benefits attributable thereto.

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 sustained a compensable injury to his right knee in the accident on February 28, 2005.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from April 14, 2005 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"The respondents' have accepted the right hip injury as compensable but are denying the right knee claim. The claimant contends that he sustained a compensable injury and/or aggravation of a preexisting condition on or about February 28, 2005, when he developed right lower extremity pain including right knee pain while performing his job duties as a polisher with the respondent and that he is

entitled to reasonable related medical care and treatment for the right knee. The claimant further contends that he is entitled to temporary total disability benefits for April 14, 2005 to September 27, 2005 and that he is entitled to a controverted attorney's fee."

In regard to these issues, the respondents contend:

"The respondents contend the claimant did not sustain an injury arising out of and in the course of his employment on February 28, 2005 to his right knee. Respondents contend that the claimant did sustain a compensable injury to his right hip on that date and all benefits have been paid based on the present medical evidence."

DISCUSSION

I. COMPENSABILITY OF THE CLAIMANT'S RIGHT KNEE DIFFICULTIES

The central issue in this case is the question of whether the claimant sustained a "compensable injury" to his right knee, on February 28, 2005. The burden rests upon the claimant to prove this fact. In order to meet this burden, the claimant must prove that he sustained a physical injury to his right knee that satisfies all of the statutory requirements for a "compensable injury" that are set out in the Act.

The first of these requirements is 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, the claimant must show that the actual existence of this physical injury or condition is supported by "objective findings," as this term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The greater weight of the medical evidence clearly proves the

actual existence of physical injury or damage involving the claimant's right knee. This physical injury or damage takes the form of infrapatellar bursitis, Grade III chondral changes or degeneration (in the area of the patella), and a large medial plica. The evidence further shows that the existence of these diagnosed defects is supported by the observation of abnormal findings, which were clearly beyond the claimant's voluntary control. These findings consist of minimal effusion of the joint (indicative of pre-patellar bursitis) that was shown on the MRI study. Further abnormalities, which were in the form of Grade III chondral changes with a large medial plica, were visibly observed by Dr. Arnold during the diagnostic and corrective arthroscopic procedure on August 8, 2005.

Therefore, in regard to these specific injuries or defects, the claimant has satisfied the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove that these medically established and objectively documented conditions satisfy the definitional requirements for a "compensable injury" which are contained in Ark. Code Ann. §11-9-102(4)(A). These requirements are:

1. That the injury or condition must arise out of and occur in the course of the employment;
2. That the injury or condition must be caused by a specific incident;
3. That the physical injury or condition must be identifiable by time and place of occurrence;

4. That the physical injury or condition must cause internal or external physical harm to the claimant's body; and
5. That the physical injury or condition must be such as to require medical services or result in disability.

The claimant testified that he had experienced no difficulties with his right knee prior to February 28, 2005. No evidence has been presented that would contradict this testimony. In fact, the record shows that the claimant had performed essentially the same employment activities for approximately one year prior to February 28, 2005. These described employment activities clearly involved repetitive and strenuous use of most, if not all, of the various muscles and joints his right leg, but particularly his knee. However, there is no evidence, whatsoever of complaints or difficulty with his right knee prior to February 28, 2005.

The claimant testified that he was performing his usual employment activities, on February 28, 2005. At approximately five hours into his shift, he experienced a sudden and immediate onset of pain in the area of his right groin, which quickly spread to include his entire right leg (including his right knee).

The testimony of the claimant concerning the factors and events surrounding the onset of his symptoms appear to be credible. This testimony coincides with the reports the claimant made to his various supervisors and physicians. Juan Rodriguez Rubio, the claimant's team "leader" testified that the claimant came up to him at work and complained that his right "leg" was hurting. He stated that he then advised his supervisor, Hector Gonzalez, of the

claimant's complaints. Mr. Gonzalez testified, that on March 2, 2005, he filled out an accident report on behalf of the claimant (the claimant is apparently illiterate in both english and spanish). At that time, the claimant reported to him that he had first noticed pain in his right groin area, but that his pain now extended to his entire right leg.

The evidence shows that at the time of the sudden onset of the claimant's right leg difficulties, he was performing his regular employment duties as a "polisher." This position required the claimant to stand in front of a polishing machine with one foot (in this instance, the right foot) on a raised step or bench. A pad was worn on the claimant's right thigh, slightly above the knee. The claimant would then rest a metal automobile or truck rim on this pad. He would then bend and flex his leg to hold and manipulate the rim against the polisher. No testimony was offered concerning the weight of these wheels or rims. However, the testimony of the claimant's supervisor (Mr. Rubio) indicated that the claimant would be expected to polish approximately 150 rims over a ten hour shift. Each rim required a number of similar movements of the claimant's arms and right leg to properly position and hold it against the polishing machine.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence the existence of a causal relationship between his medically established and objectively documented right knee difficulty and his employment related activities for the respondent

on February 28, 2005. Thus, he has satisfied the initial statutory requirement of Ark. Code Ann. §11-9-102(4)(A)(i), i.e. that his injury must “arise out of and occur in the course of the employment.”

The medically established and objectively documented physical injuries or defects, involving the claimant’s right knee could have logically been caused by the claimant’s employment related activities on February 28, 2005, as these activities would clearly place significant stress on the right joint, as a well as the other joints and muscles of his right leg. The first appearance of symptoms was indicative of the presence of these injuries or defects appeared within a reasonable period of time following this employment related activity. There is also no evidence presented to show any reasonable alternative cause. Under the well established case law, as set out in Hall v. Pittman Construction Company, 235 Ark. 104, 357 S.W. 2nd 263(1962). These facts alone are sufficient to prove the necessary causal relationship, and no expert medical opinion on causation would be absolutely required.

However, the only medical evidence presented, on the issue of causation, would support the existence of this required causal relationship. In his report of October 18, 2005, Dr. Christopher Arnold stated:

“It appears this (the medically established and objectively documented injuries and defects involving the claimant’s right knee) was directly related to his (the claimant) work injury.”

Dr. Arnold is unquestionably an expert in the area of medicine

associated with injuries and conditions involving the knee. He is a board certified orthopaedic surgeon and specializes in the treatment of knee injuries and conditions. He is also the claimant's primary treating physician for his right knee difficulties. His opinion on causation is stated with conviction and clarity. There is no evidence that it is in any way based upon any material mistake of fact or lack of knowledge necessary to reach this opinion. Thus, his opinion would be stated "within a reasonable degree of medical certainty."

I would note that Dr. Arnold's office notation of June 7, 2005, does appear to contain an error in regard to the events precipitating the claimant's right knee difficulties. In this office notation, Dr. Arnold indicated that the claimant's knee difficulties began after a "heavy object fell" on the claimant's right knee in February of 2005. This history again appears in Dr. Arnold's history and physical, dated August 5, 2005. However, this description of the events preceding the onset of the claimant's right knee difficulties is clearly contrary to the history initially recorded by Dr. Arnold at the time of the claimant's first visit on April 28, 2005. At that time, Dr. Arnold recorded a history of the events surrounding the claimant's right knee complaints as follows:

"He (the claimant) was doing some work where he would have a heavy object on his right thigh."

Thus, it would appear that the subsequent descriptions by Dr. Arnold were due merely to errors in dictation or to

miscommunication between Dr. Arnold and the claimant, due to the claimants inability to speak English. However, I do not find that these discrepancies in Dr. Arnold's description of the events precipitating the onset of the claimant's knee difficulties has any adverse significant impact on the weight to be afforded his expert medical opinion on causation.

I am also aware that the initial reports and records of Dr. Thorne, a general practitioner and the respondent's company physician, focus on difficulties with the upper portion of the claimant's right leg, rather than the right knee. However, it is obvious from the records and reports of Dr. Thorne, as well as the claimant's initial reports to the respondent, that the claimant was complaining of pain and difficulties involving his entire right leg, including his knee.

In Dr. Thorne's initial intake records the claimant's chief complaint is stated as: "right leg pain." In his initial AR-3 Dr. Thorne recorded that the claimant was complaining of pain from his right groin to his right foot. It is also important to note that in this initial report Dr. Thorne felt it necessary to restrict the claimant from "propping anything" on his right leg. The initial written report of injury to the respondent and the oral reports of the claimant to his supervisors all note pain and difficulties involving the claimant's entire right leg, including his knee.

It appears that Dr. Thorne's focus on the claimant's right hip and groin complaints may simply have been due to the fact that the claimant's pain may have initially been more severe in this area,

in comparison to his right knee. It may have also simply been due to the claimant's lack of ability to accurately communicate the total nature and extent to his complaints to Dr. Thorne, due to his inability to speak English. In either event, I find that the greater weight of the evidence shows that the claimant's right knee difficulties initially began on or about February 28, 2005.

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence further shows that the claimant's employment related injury to his right knee resulted in "internal physical harm" to this part of his body. The claimant's clinical findings, the result of the MRI study of his right knee, and Dr. Arnold's visual observations during the arthroscopic procedure all clearly show the presence of internal physical damage to the claimant's right knee joint. Thus, the claimant has satisfied the second requirement for a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(i).

In order for the claimant to establish a "compensable injury" to his right knee, under Ark. Code Ann. §11-9-102(4)(A)(i), he must show that the employment related cause of his right knee difficulties was a "specific incident." However, it is not necessary for him to prove that this employment related incident was the sole or even "major" cause of his right knee difficulties. The Act does not expressly define the term "specific incident." Thus, this term must be interpreted by giving these words their usual and customary meaning. To a great extent, this definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(i) is linked to

another requirement of this subsection, that requirement being that the injury itself, must be identifiable by “time and place of occurrence.”

The record shows that the claimant had been performing the same employment activities with his right leg for the first five hours of his shift, on February 28, 2005. These activities required the forceful or strenuous use and movement of his right leg, in order to properly position the automobile on truck rims against the “polisher.” The claimant testified that, in the midst of performing these employment tasks, he experienced a sudden and immediate onset of pain in his entire right leg, including his knee. I find the claimant’s testimony in this regard to be credible and consistent with the various histories that he gave to his supervisor and physicians.

Thus, while the claimant’s use of his right leg, in performing his required employment tasks, might appear to be equally stressful or strenuous, it would appear from the sudden onset of his symptoms that the particular stress on the claimant’s right leg immediately prior to the onset of his pain, was the precipitating event or cause of the injury producing this pain. This stress or trauma would appear to be sufficiently limited in time to constitute a “specific incident” (giving those words their usual and customary meaning).

This credible testimony would also be sufficient to satisfy the statutory requirement that the occurrence of the injury itself, be identifiable by time and place. Thus, the claimant has

satisfied two more of the definitional requirements for a “compensable injury,” under Ark. Code Ann. §11-9-102(4)(A)(i).

The final definitional requirement of this subsection is that the injury must be of such a type and magnitude that it reasonably requires medical services or results in disability. The evidence clearly shows that this injury “required” medical services. Although Dr. Thorne focused his attention primarily on the claimant’s right leg difficulties in the hip, he obviously felt medical services were necessary to evaluate and treat the symptoms in the claimant’s entire right leg. In fact, he appears to have subsequently attempted to refer the claimant for additional orthopaedic evaluation and treatment of these difficulties, which was refused by the respondents. It is further obvious from the medical reports and records of Dr. Arnold that it was his expert medical opinion that the claimant required appropriate medical services to evaluate and treat not only the difficulties in the area of the right hip, but all of the claimant’s right leg difficulties, including those with the right knee. As a medical expert, it cannot be assumed that Dr. Arnold would provide services that were unnecessary or inappropriate.

It is further apparent from the claimant’s credible testimony and the medical evidence presented, that the claimant sustained restrictions and limitations on the ability to use his leg as a result of his employment related right leg and knee injury. These limitations and restrictions culminated in actual “disability,” when the respondent ceased providing the claimant with appropriate

restricted employment. Therefore, the claimant has proven the final definitional requirement for a “compensable injury,” under Ark. Code Ann. §11-9-104(A)(i).

In summary, I find that the claimant has proven by the greater weight of the credible evidence that he sustained a compensable injury to his right knee, as well as his right hip, on February 28, 2005. Specifically, he has proven by the greater weight of the credible evidence the occurrence of a physical injury to his right knee that is established by medical evidence, supported by objective findings, arose out of and occurred in the course of the employment, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to his body, required medical services, and resulted in disability. He would be entitled to appropriate benefits under the Act for this compensable injury.

II. BENEFITS

Clearly, the claimant would be entitled to “reasonably necessary medical services” for his compensable right knee injury (as well as those voluntarily provided for his admittedly compensable right hip or upper leg injury). After consideration of the evidence presented, it is my opinion that the medical services provided the claimant for his right knee difficulties by and at the direction of the physicians at the Northwest Family Practice Clinic (Dr. William Kendrick and Dr. Robert Wilson) and by and at the direction of Dr. Christopher A. Arnold, represent “reasonably necessary medical services” for the claimant’s compensable right

knee injury. All of the medical services provided by these physicians were necessitated by or connected with the claimant's compensable knee injury and resulting complaints. The type and duration of the services provided by these physicians follows with the routine or normal medical practice of this area for the evaluation and treatment of knee injuries, such as that experienced by the claimant. It is further apparent that these medical services have actually accomplished the purposes or goals for which they were intended, i.e. the accurate diagnosis of the nature and extent of the claimant's right knee injury, the resolution or improvement of the actual physical damage produced by the injury, and the resolution or improvement of the symptoms and limitations resulting from the knee injury.

Pursuant to Ark. Code Ann. §11-9-508, the respondent would be liable for the expense of these medical services. This liability is subject to the medical fee schedule established by this Commission.

The claimant also seeks temporary total disability benefits for his knee injury beginning on April 14, 2005, and continuing through a date yet to be determined. The burden rests upon the claimant to prove his entitlement to such benefits during this period. In order to meet this burden, the claimant must show that during this period, he has continued within his healing period from the effects of his compensable knee injury and has not "returned to work", Ark. Code Ann. §11-9-521(a). As the compensable injury giving rise to this claim for temporary total disability benefits

was to a "scheduled member," the claimant need not prove actual disability during the foregoing period.

The duration of the healing period is a medical question, which must be resolved on the basis of the medical evidence presented. In the present case, the medical evidence shows that the claimant has continued under active medical treatment for the compensable injuries to his right leg, including his compensable right knee injury, from March 3, 2005 through at least December 20, 2005. The latest medical report of Dr. Arnold, dated December 20, 2005, shows that the claimant was seen on that date and was provided medical treatment in the form of a local injection into his knee joint. This report further indicates that the claimant is being continued on anti-inflammatories and was directed to return for further evaluation in three months.

I find the medical evidence sufficient to prove that the claimant has continued within his healing period from the effects of his compensable right knee injury from April 14, 2005 through a date yet to be determined. Thus, the claimant has satisfied the first requirement for his entitlement to temporary total disability benefits during the period in question. However, he must still show that he has not "returned to work."

The evidence shows that following the accident on February 28, 2005, the respondent initially provided the claimant with limited or light duty employment. However, the respondent elected to cease providing such employment on April 14, 2005, and have clearly continued this refusal thereafter.

Without objection, the claimant has offered the records of the Arkansas Appeals Tribunal, concerning a claim for unemployment benefits (Claimant's Exhibit No. 4). Except to show that the claimant apparently applied for unemployment benefits (at some time prior to September 21, 2005), and that these benefits were denied, I find these documents of no particular probative value. Certainly, the statements or findings of the Appeals Tribunal concerning the relationship of the claimant's injuries to his employment, his physical restrictions or limitations from these injuries, or his ability or inability to perform "suitable work" is in no way binding on this Commission.

At the hearing, the claimant testified that he began working for a friend (Juan Revas) some time in October of 2005. He stated that this employment was only part-time and that he only earned \$50.00 to \$100.00 per week. He described this employment as picking up and delivering parts. However, it does not appear that the part-time nature of this position was due to physical restrictions or limitations from the claimant's compensable knee injury. Rather, it would appear that this part-time status is due merely to a lack of available work at Mr. Revas' business. The claimant further testified that he had not attempted to find full-time employment elsewhere, including light delivery work.

____In light of the foregoing facts, I find that the evidence presented fails to prove that the claimant had not "returned to work," within the meaning of Ark. Code Ann. §11-9-521(a), after October of 2005. Thus, the claimant would not be entitled, under

the foregoing subsection, to continuing temporary total disability benefits beginning in October of 2005.

In summary, I find that the claimant has proven his entitlement to temporary total disability benefits for his compensable right knee injury for the period beginning April 14, 2005 and continuing through October 1, 2005. During this period, he has proven by the greater weight of the credible evidence that he has continued within his healing period from the effects of his compensable right knee injury and had not returned to work. However, the claimant has failed to prove his entitlement to continuing temporary total disability benefits after October 1, 2005. Specifically, the claimant has failed to prove that during this period he had not "returned to work".

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On February 28, 2005, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On February 28, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$319.00 for total disability and \$239.00 for permanent partial disability.
4. On February 28, 2005, the claimant sustained a compensable injury to his right hip.
5. At present, there is no dispute over benefits to which

the claimant would be entitled as a result of this admittedly compensable right hip injury.

6. On February 28, 2005, the claimant also sustained a compensable injury to his right knee. Specifically, the claimant has proven that on that date he sustained a physical injury to his right knee, which is "established" by medical evidence, supported by objective findings, arose out of and occurred in the course of his employment, was caused by a specific incident, is identifiable by time and place of occurrence, caused internal physical harm to his body, required medical services, and resulted in disability.
7. The medical services provided to the claimant for his right knee difficulties by and at the direction of the physicians at the Northwest Family Practice Clinic (Dr. William Kendrick and Dr. Robert Wilson) and by and at the direction of Dr. Christopher A. Arnold represent "reasonably necessary medical services" for the claimant's compensable right knee injury. Pursuant to Ark. Code Ann. §11-9-508, the expense of these services is the obligation of the respondents herein. The respondents' liability, in this regard, is limited to the medical fee schedule established by this Commission.
8. The claimant was rendered temporarily totally disabled by his compensable right knee injury for the period beginning April 14, 2005, and continuing through October

1, 2005. The claimant has proven by the greater weight of the credible evidence that, during the foregoing period, he continued within his healing period from the effects of his compensable right knee injury and had not "returned to work." The claimant has failed to prove by the greater weight of the credible evidence that he had "not returned to work", after October 1, 2005.

9. The respondents have denied the occurrence of any compensable injury to the claimant's right knee and have controverted the claimant's entitlement to any and all benefits attributable to such an injury.
10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period commencing April 14, 2005 and continuing through October 1, 2005.

The respondents shall be liable for the medical expenses incurred by the claimant as a result of reasonably necessary medical services provided him for his compensable right knee injury by and at the direction of the Northwest Family Practice Clinic and by and at the direction of Dr. Christopher Arnold. This liability is subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded. One-half of this fee is the obligation of the respondents in addition to such benefits. The remaining one-half of this fee is to be withheld by the respondents from such benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge