

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F201663

RICKY WALLACE, EMPLOYEE	CLAIMANT
WEST FRASER SOUTH, INC., EMPLOYER	RESPONDENT
AMERICAN MANUFACTURERS MUTUAL INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED MAY 10, 2006

Remand from the Arkansas Supreme Court Mandate delivered January 6, 2006.

Opinion authored by HON. S. DALE DOUTHIT, Administrative Law Judge, Little Rock, Pulaski County, Arkansas.

Claimant/Appellant represented by HON. BILLY J. HUBBELL, Attorney at Law, Crossett, Arkansas.

Respondents/Appellee represented by HON. DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 10, 2002, the above-captioned claim came on for a hearing in El Dorado, Arkansas. An opinion denying benefits was filed by a prior Administrative Law Judge on November 22, 2002, which was affirmed and adopted by the Full Commission on September 4, 2003. The Arkansas Court of Appeals reversed and remanded the claim back to the Commission for an Award of benefits. On April 14, 2005, the Arkansas Supreme Court granted respondents' Petition for Review. On January 26, 2006, the Arkansas Supreme Court affirmed the Court of Appeals reversed the Full Commission, and remanded the claim to the Commission for a determination of benefits.

By order filed February 23, 2006, the Full Commission remanded this claim to this Administrative Law Judge for a determination of benefits.

At the original hearing the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee/employer/carrier relationship existed between the parties on February 5, 2002.
- 3) The claimant earned sufficient wages to entitle him to the maximum compensation rates in effect at the time of the alleged injury. (\$425.00/\$319.00 for TTD/PPD, respectively.)
- 4) That should this claim be found compensable, it is stipulated the claimant was temporarily totally disabled from February 6, 2002 through April 1, 2002.

The parties agreed the issues to be presented at the October 10, 2002 full hearing were as follows:

- 1) Whether the claimant sustained a compensable injury on February 5, 2002, for which he is entitled to medical and indemnity benefits.
- 2) Controversion and attorney fees.
- 3) All other issues are specifically reserved. (Initially claimant contended entitlement to permanent partial disability; however, the parties agreed issues related to permanency were not ripe at that time and were therefore reserved.)

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, 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 a compensable right knee injury arising out of and in the course of his employment, while he was performing employment services.
- 4) The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right knee caused by a specific incident and identifiable by time and place of occurrence.
- 5) The claimant has proven by a preponderance of the evidence that he sustained a compensable right knee injury which caused internal physical harm to the body requiring medical services, and that the existence and extent of his injuries are established by medical evidence supported by objective findings.
- 6) The respondents are responsible for all reasonably necessary medical expenses related to the claimant's February 5, 2002 compensable right knee injury.
- 7) The claimant is entitled to temporary total disability benefits for the period February 6, 2002, through April 1, 2002, (as stipulated by the parties), plus associated attorney fees.
- 8) All other issues are expressly reserved.

DISCUSSION

The relevant facts and history of this claim are set forth in the prior opinions

issued by the Commission, Arkansas Court of Appeals and the Arkansas Supreme Court, and will not be repeated herein. The Commission initially denied this claim on the grounds the claimant was not within the course and scope of his employment, or performing employment services at the time of his fall. The Court of Appeals and the Arkansas Supreme Court reversed the Commission. The Court of Appeals reversed, holding that "appellant's crossing the board in order to return to work was an activity that directly advanced his employer's interests and therefore, constituted employment services. Because appellant was performing employment services at the time of his injury, we reverse and remand for an award of benefits." ***Wallace v. West Fraser South***, ____ Ark. App. ____, ____ S.W. 3d ____ (Feb. 16, 2005). The Arkansas Supreme Court held "The Commission's decision was based on an incorrect interpretation of the law," and went on to reverse and remand. ***Wallace v. West Fraser South***, ____ Ark. App. ____, ____ S.W. 3d ____ (Jan. 26, 2006).

COMPENSABILITY

For the claimant to establish a compensable injury as a result of a specific incident, the following requirement 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 his 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.

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.

At the time of his injury, the claimant was "performing employment services."

Wallace v. West Fraser South, Supra. I find the claimant has proven by a preponderance of the evidence that he sustained an injury arising out of and in the course of his employment, while he was performing employment services. Given the evidence herein, I find the claimant has proven by a preponderance of the evidence that he sustained an injury caused by a specific incident and identifiable by time and place of occurrence.

The medical records document that the claimant sustained injuries to his right knee, including, but not limited to, a right knee medial meniscus tear, which had to be corrected with a right knee arthroscopy. The claimant testified he had not been having any significant right knee trouble before the February 5, 2002, fall at work and that testimony appeared to be uncontroverted. I do note the record contains evidence of claimant's right knee trauma years before the accident; however, no evidence of a

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meniscus tear in any significant proximity to February 5, 2002. Nevertheless, an employer takes an employee as he finds him, and the aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable. I find the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right knee on February 5, 2002.

AWARD

The claimant has proven by a preponderance of the evidence that he sustained compensable injuries to his right knee on February 5, 2002. The respondents are hereby directed and ordered to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein.

The claimant's attorney, Mr. Billy J. Hubbell, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to A.C.A. §11-9-715. 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 A.C.A. §11-9-809.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

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