

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NOS. F603253 and F603254**

**ROBERT D. BIGGERS, EMPLOYEE**

**CLAIMANT**

**GUY KING & SONS, d/b/a  
KING READY MIX, EMPLOYER**

**RESPONDENT**

**BITUMINOUS CASUALTY COMPANY,  
CARRIER/TPA**

**RESPONDENT**

**OPINION FILED JUNE 22, 2007**

Hearing before Administrative Law Judge O. Milton Fine II on April 13, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. R. Scott Zuerker, Attorney at Law, Fort Smith, Arkansas.

**STATEMENT OF THE CASE**

On April 13, 2007, the above-captioned claims were heard in Mountain Home, Arkansas. A prehearing conference took place on November 27, 2006. A Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. Along with the addition one offered at the hearing, they are the following four, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed on or about September 12, 2005 and October 19, 2005.
3. Respondents have controverted these claims.
4. If Claimant's fiancé had been called to testify at the hearing, her testimony would corroborate the testimony of Claimant.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

The following were litigated:

#### Claimant:

1. Whether the Arkansas Workers' Compensation Act is constitutional.
2. Whether Claimant sustained compensable injuries to his back, right knee and right hip.
3. Whether Claimant is entitled to reasonable and necessary medical treatment.

#### Respondent:

1. Whether the Claimant sustained compensable injuries.
2. Whether Claimant is entitled to medical treatment.

### Contentions

#### Claimant:

1. The Arkansas Workers' Compensation Act is unconstitutional.
2. The injuries Claimant sustained to his back, right knee, and right hip arose in the course and scope of his employment; and these injuries are compensable, entitling him to all related benefits.

Respondents:

1. The Claimant did not sustain a compensable injury as that term is defined by Act 796. Alternatively, Respondents raise “notice” as a defense to any benefits to which the Claimant may otherwise be entitled to prior to November 9, 2005.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers’ Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. As held by the Arkansas Court of Appeals, the Arkansas Workers’ Compensation Act is constitutional on the points argued by Claimant; and his Motion to Recuse is without merit.
4. Claimant has not proven by a preponderance of the evidence that his back and right hip injuries are compensable.
5. The reasonable and necessary medical care issues regarding his back and hip are moot in light of the above finding.
6. Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his right knee on October 19, 2005.

7. Claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment of the knee, including all treatment thereof referenced in Joint Exhibit 1.
8. Under Ark. Code Ann. § 11-9-701(b)(1)(A), Claimant's employer had knowledge of Claimant's knee injury on the date it occurred, rendering Respondents liable for any benefits beginning on that date.

### **CASE IN CHIEF**

#### Summary of Evidence

\_\_\_\_\_ Three witnesses testified at the hearing: Claimant; Noel House, Jr., the batch plant manager for Respondent King Ready Mix; and Tony Belk, controller for Respondent King Ready Mix. Also, as noted above, the parties stipulated that Claimant's fiancé, if called, would corroborate Claimant.

In addition to the pre-hearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Joint Exhibit 1, a compilation of Claimant's medical records consisting of three index pages and 81 individually numbered pages; and Joint Exhibit 2, the transcript of the deposition of Claimant taken June 30, 2006 consisting of 75 individually numbered pages.

#### Testimony

Robert D. Biggers. Claimant testified that he is 62 years old and single. He completed the fifth grade, and has trouble reading and writing. His work over the years has consisted of nothing but hard manual labor. At the time Claimant injured his knee, he had worked for Respondent Guy King for a little over two years. His job was to operate various

vehicles and pieces of equipment, including ready-mix cement trucks, front end loaders, backhoes and trackhoes.

He stated that his last day on the job was October 19, 2005. Two or three weeks prior to that, he injured his right knee while getting off a backhoe. He missed a rung, slipped, and his knee twisted and landed on some concrete that was being loaded. He returned to the shop in the cement truck and told "Barbara" in the office of Respondent Guy King that he had hurt his knee and was going to the hospital. "Barbara" told Claimant to tell Tony Belk, and Claimant did. Belk told him to tell "Roy" at the ready mix site where he was going. Claimant testified that he parked the cement truck, got into a pickup, and after telling "Roy" where he was headed, went to the hospital.

According to Claimant, he underwent some testing at the hospital. Around two weeks later, he saw Dr. Knox. Claimant had surgery on his knee thereafter. He testified that he is asking Respondents to pay for his medical expenses related to his knee injury.

Claimant stated that he also hurt his back. This occurred approximately on September 12, 2005. Claimant had a concrete chute on his shoulder that weighed 80 to 90 pounds and was pouring concrete when he slipped and fell. He stated: "And I kinda twisted my back, which I thought it was just maybe a muscle pull or something. And I didn't think much about it at the time." Claimant stated that he told Junior House, the manager at the ready mix site in Flippin about his injury the day it occurred. House asked him if he wanted to go to the doctor, but Claimant told him that he may have simply pulled a muscle and wanted to wait and see. He testified that he "didn't fill out a regular report or nothing on it." It was not until he went in for treatment for his knee that he sought attention for his back. Claimant stated that his back hurts if he is working and lifting, and feels better if he

is stretched out and relaxed. He also stated that his back continues to bother him. The pain has stayed the same—never getting better or worse. However, his right foot is now numb, which Claimant attributed to the back injury. He testified that he wishes to have his back examined by a specialist to determine what the problem is.

Claimant added in his testimony that he is not sure of the dates of his injuries. He does not keep a calendar. He also stated that he is not claiming that his instances of skin cancer, which are documented in his medical records, are compensable.

On cross-examination, Claimant testified that he believed he injured his back on September 12, 2005, and that his knee injury happened during the week of October 19, 2005. He based the October 19 date on the belief that was the date of his last paycheck. Claimant stated that he does not remember going to the emergency room after the September 12 incident, even after being shown a emergency room report dated September 13, 2005 that references back, right hip and right leg pain, and numbness in the right leg and foot. He testified that the day after his back injury, he either hauled cement or operated a front end loader that day. He did not remember seeking treatment until after he injured his knee.

Claimant also testified that during the course of his treatment, he never told any of the doctors how he hurt his back—only that he had slipped and fell. He reiterated that his back injury occurred when he was holding a concrete chute, not lifting concrete blocks. When he went to the emergency room in October, he told them that while he had back pain, it was worse after his knee injury, and that his back and hip were hurting worse than the knee. He recalled being taken off work and kept in the hospital for three days.

As for his knee injury, he testified that it was probably around November 7, 2005 when he first told a doctor, Dr. Knox, about falling off of a backhoe. That would have been two to three weeks after he first went in for treatment. While he recalled seeing Dr. Richardson in May 2006, Claimant did not remember telling him that while he injured his back at work, there was no apparent reason for it. He did ask Dr. Richardson if he thought his injuries were related to work.

On October 24, 2005, Claimant was diagnosed with heart problems, and Dr. Hassan Albataineh took him off work at that point. This was for a short period. But according to Claimant, on November 9, 2005, Dr. Albataineh gave him another slip that took him off of work for a year due to his heart. He gave the slip to Belk at Respondent Guy King, but did not tell him that it was due to the heart condition.

Claimant testified that Medicare has paid for some of his treatment, including his knee surgery. He never got a bill for his MRI. However, Medicare has not paid for his cardiology treatment. Presently, he is on Social Security disability, and is approximately one year away from his regular Medicare coverage resuming.

Finally, while he did not recall filling out a post-job offer medical questionnaire, listing his medical history, with Respondent Guy King, Claimant stated that he did remember telling them that he had some back problems. On redirect examination, he testified that he has never filled out any employment applications or forms without help.

Deposition. Claimant's June 30, 2006 deposition was admitted as Joint Exhibit 2. There, he testified that on September 12, 2005, he was running a ready mix truck and was pouring concrete on a narrow bridge. He stated that he "started around the truck with one of the concrete [chutes] on my shoulder and I slipped and fell and hit my back." At the time

of the fall, Claimant had not started pouring. Claimant stated that he tripped over some rebar. As he went down, he threw the chute to keep it from striking him. He testified that he fell backwards and to the side and landed on his back. He stated that someone witnessed the fall and asked if he was okay. Claimant told him that he was and resumed working.

Claimant testified that he felt a sharp pain right after the fall in the center of his back, just above the belt-line. There was no pop. It took Claimant approximately 90 minutes to complete the pour, clean his truck, and return to the plant. When he arrived, he told his supervisor, House, about falling, but said that he did not want to go to a doctor because he did not think he was hurt—that he wanted to wait a day or two and see how he felt. He went home, took a hot shower and some aspirin, and went to bed. Although he stated that his back bothered him that night, Claimant stated that when he awoke the next morning, he did not feel that he had to go to the doctor. While his back only hurt slightly then, his right leg felt numb. He went to work and told House that he felt okay. He did not fill out or sign any forms, and did not see House do so either. Claimant stated that he worked all day hauling cement, but that the pain got steadily worse as he loaded and unloaded the chutes, which weighed from 70 to 100 pounds, from the truck to use in pouring.

According to Claimant, he went home that next night and took an analgesic. The next day, September 14, 2005, his back felt better. Within two or three days, Claimant was assigned to operate a front-end loader at a creek, stockpiling gravel and loading it onto trucks. Claimant stated that he did not lift chutes while doing this job, but that the ride on the equipment was very rough.

Claimant testified that on October 19, 2005, he was operating a backhoe loading busted concrete onto a truck. When he stepped off of the backhoe, his foot slipped and struck a chunk of concrete with his right knee. He described the pain in his knee as sharp and located in his kneecap. His foot was going numb as well. However, his back did not hurt. Claimant was unsure if anyone witnessed the fall. He stated that he got into the truck and returned to the office, where he told "Barb" what had happened and that he was going to the doctor. She told Claimant to tell Belk what happened. After he related to Belk what had occurred, Belk told him that the accident was not work-related. But Claimant went to the emergency room anyway.

At the hospital, x-rays and a CAT scan were taken of Claimant's knee. In addition, he was given a shot for pain. Around November 4, 2005, Belk filled out Claimant's workers' compensation paperwork and Claimant signed it. Between October 19 and November 4, Claimant and Belk did not converse regarding the claim.

Around April 19, 2006, Claimant underwent surgery on his knee, which was paid for by Medicaid. Claimant testified that the knee hurts worse now than before the surgery, especially after he walks. He also testified that his right leg and foot are numb and that he needs back surgery. Claimant has only seen Dr. Knox and his partner, Dr. Richardson, for his knee and back.

Claimant testified as of the time of his deposition, his back felt better but his right foot and leg were becoming more numb. Prior to September 12, 2005, he never had any back problems. He also had no pre-existing knee problems.

Claimant stated that he was approved for Social Security disability on his first application. He has not worked since October 19, 2005.

Claimant's fiancé. While she was never identified by name, the parties stipulated that if she had been called to testify at the hearing, her testimony would have corroborated Claimant's account.

Noel House, Jr. Called by Respondents, Mr. House testified that he has worked for Respondent Guy King for approximately seven years and is the manager of a concrete batch plant—a job that places him in charge of the ready mix trucks. There was a point in time where Claimant worked under his supervision. House stated that he did not recall Claimant coming to him on September 12, 2005 and telling House that Claimant had hurt himself. House testified that if an employee reports an injury, he writes it down in his file. In preparation for the hearing, he reviewed all of his records; however, he found no notation of an injury report by Claimant.

On cross-examination, House admitted that it was possible that Claimant reported an injury but that he had been too busy to write it down at the time.

Tony Belk. Belk testified that he has been the controller at Respondent Guy King for about six years. Handling workers' compensation is one of his job duties, and all of the on-the-job injuries are reported to him. Belk stated that Claimant did not inform him that he had been injured on October 19, 2005. Claimant brought him an off-work slip on November 9, 2005, stating that he was being taken off work due to heart problems. According to Belk, Claimant contacted him later that day, mentioned knee pain, and wanted to know if he could file it under workers' compensation. He told Claimant that he would have to fill out a form; and Claimant came back in and filled out the form. Belk stated that he thought the matter concerned Claimant's heart, but he also mentioned the knee on the form that he filed.

Records

The medical records of Claimant that were introduced at the April 13, 2007 hearing and are part of Joint Exhibit 1 reflect the following:

On September 13, 2005, Claimant presented to Dr. Phillip Bufford at the Baxter Regional Medical Center with a two-day history of worsening right leg pain and numbness, numbness in the foot and lower leg, some swelling in the leg, and pain in the right hip and buttock area. Claimant had a history of recent heavy lifting—concrete blocks. He stated he had back pain at the time of lifting, but none at the time of examination. A venous Doppler revealed no signs of deep vein thrombosis. X-rays showed degenerative changes in the hip, but no fractures or dislocations. X-rays of the spine showed degenerative changes at the L5-S1 level and disk space narrowing at the L2-L3 level, along with bony spurs, but no definitive signs of a compression fracture. Dr. Bufford's impression was "[r]adicular symptoms, probable herniated nucleus pulposus." He took Claimant off of work for one week.

Claimant again presented to Dr. Bufford at Baxter Regional on October 24, 2005 "with worsening right knee pain." However, there was no obvious effusion. And there was a negative drawer sign and a normal pivotal shift. X-rays were normal and showed no knee fracture or dislocation.

On October 25, 2005, Claimant presented to the hospital with "one week of right knee pain, severe, intermittent, aggravated by activity, radiates to the right hip. No swelling." Dr. Albatineh prescribed morphine and ordered an MRI. The MRI revealed a tear of the posterior aspect of the medial meniscus. According to the record of his November 7, 2005 visit to Dr. Knox, Claimant described his injury as follows: "This

gentleman was working on a backhoe when he missed a rung on the ladder and came down hard on his right knee, twisting it. He has been having substantial right knee pain since that time.” Claimant presented to Dr. Albataineh on December 12, 2005, with knee, low back and hip pain.

Based on the MRI finding, along with his examination, Dr. Thomas Knox recommended arthroscopy of the knee. Dr. Knox saw Claimant again on March 27, 2006. Noting that Claimant was “having increasing pain in the right knee consistent with his meniscus tear,” Dr. Knox stated that he would proceed with a right knee scope. He presented to Dr. Albataineh on March 30, 2006 with right knee and low back pain plus right foot numbness and weakness. On April 13, 2006, Dr. again examined Claimant. Based on the MRI showing a medial meniscus tear, Dr. Knox again recommended proceeding with an arthroscopy.

Claimant underwent knee surgery—specifically, arthroscopy, arthroscopic partial lateral meniscectomy, and arthroscopic partial medial meniscectomy—on April 19, 2006. He was given the following diagnoses by Dr. Knox:

1. Lateral meniscus tear, right knee.
2. Medial meniscus tear, right knee.
3. Grade 4 chondromalacia, lateral tibia-fibula joint and medial tibia-fibula joint.

A CT scan of Claimant’s lumbar spine was done on March 31, 2006. According to Dr. William Landrum in his radiology report, at L3-L4 there was “demonstration of a somewhat lateral disk herniation. This does appear to be compromised in the neuroforamina on the right at this level to a considerable degree.” The scan also showed

very broad degenerative disk bulging at L4-L5, with possible stenosis at this level. The L5-S1 level demonstrated degenerative disk disease.

An MRI of Claimant's lumbar spine was taken on April 14, 2006, which showed a moderate-sized right paracentral disk herniation at L3-L4 extending upward. The MRI report reads that "[t]here is a high likelihood that this is causing some compression on the right L3 nerve root." In addition, there was also a concentric disk bulge at L3-L4 with moderate spinal stenosis. Finally, degenerative changes, without stenosis, were found at L2-L3, L3-L4, and L5-S1.

Dr. Travis Richardson of Regional Orthopaedic Health Care saw Claimant on May 5, 2006. Claimant presented with significant pain and numbness in his right leg and numb toes. According to the record, "[the pain] began on October 19, 2005 and [Claimant] believes that it occurred at work. He states that there was no apparent reason for it but he believes that he was twisting when it occurred." Dr. Richardson's review of the April 2006 MRI showed a L3-L4 herniated nucleus pulposus, along with a L4-L5 mild herniated nucleus pulposus with some central stenosis in this area also. He found that Claimant's complaint of significant pain radiating into his right lower extremity was consistent with the MRI findings. His assessment also reads:

At this particular point the patient is curious as to whether or not this pain was indeed caused by the injury at work. I told him that I cannot be completely sure that this was caused by the injury at work, but it indeed could be exacerbated by his injury there and/or caused, but at this particular point it would be hard to tell this for sure.

Dr. Richardson stated that Claimant likely needs to proceed for an epidural steroid injection and/or surgery.

**ADJUDICATION****A. Constitutionality**

Claimant filed on January 26, 2007, a "Motion to Recuse and Notice of Intent to Introduce Evidence at Hearing." Therein, he argues, *inter alia*, that the provisions of the Arkansas Workers' Compensation Act that provide for the establishment of administrative law judges are unconstitutional. The motion and related documents have been blue-backed to the record in this case.

The points raised in the motion are identical to those considered and rejected by the Arkansas Court of Appeals in *Long v. Wal-Mart Stores, Inc.*, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Ark. Ct. App. Feb. 21, 2007), *pet. for rev. denied*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Ark. Sup. Ct. May 3, 2007). The act is constitutional, and Claimant's motion is hereby denied.

**B. Compensability**

Claimant has alleged that he incurred compensable injuries to his back and right hip on or about September 12, 2005, and to his right knee on October 19, 2005, as a result of falls he suffered in the course and scope of his employment at Respondent Guy King.

Arkansas Code Annotated § 11-9-102(4)(A)(i) (Repl. 2002), which the I find applies to the analysis of all of Claimant's alleged injuries, defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). "Objective findings" are those

findings which cannot come under the voluntary control of the patient. *Id.* § 11-9-102(16).

The element “arising out of . . . [the] employment” relates to the causal connection between the claimant’s injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a claimant’s employment “when a causal connection between work conditions and the injury is apparent to the rational mind.”

*Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Back. Claimant testified that he injured his back on or about September 12, 2005 by tripping over some rebar and falling while he was carrying a concrete chute. The medical records in evidence reflect that he went to the hospital on September 13, 2005 with complaints of worsening right leg pain and numbness, numbness in the foot and lower leg, and some swelling in the leg, along with pain in the right hip and buttock area, that had been present for two days. According to the record, Claimant told the doctor that he had been lifting concrete blocks; but no mention is made of a fall of any type. And Claimant’s hearing and deposition testimony make no reference to lifting blocks as the cause. He told Dr. Richardson on May 5, 2006 that he injured his back on October 19, 2005 at work while performing a twisting motion. Even then, regardless of the date, he described no fall. Claimant testified that he informed House of his injury the day it occurred. However, House did not recall such an incident, and testified that a review of his records disclosed no reference to such a report, despite the fact that it was his practice to write such things down.

The x-rays taken on September 13 showed that Claimant had degenerative changes at the L5-S1 level and disk space narrowing at the L2-L3 level, along with bony spurs, but no definitive signs of a compression fracture. While Dr. Bufford suspected that he had a herniated nucleus pulposus, there were no objective medical findings of an acute spinal injury at that time. It was not until six-and-a-half months later, with the CT scan, that there was a finding of a lateral disk herniation at L3-L4, and disk bulging and possible stenosis at L4-L5. The L3-L4 herniation was confirmed by the April 14, 2006 MRI. Also worthy of note is that Dr. Richardson on May 5, 2006 declined to state definitively that the injury was work-related.

After review of the evidence presented in this case, I cannot find that Claimant has proven by a preponderance of the evidence that his back injury was arose out of and in the course of his employment with Respondent Guy King and was caused by a specific incident identifiable by time and place of occurrence; nor can I find that there is medical evidence, supported by objective findings, that Claimant suffered an acute injury to his back. Because such findings did not appear until much later, and were not present on the x-rays taken in September 2005, it would require speculation and conjecture for me to connect the CT and MRI findings in Spring 2006 to an alleged fall at work over six months prior. Speculation and conjecture cannot serve as a substitute for proof. *Dena Construction Co. v. Hemdon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979); *Gregory v. State Hwy. & Transp. Dept.*, 2006 AWCC 23 (Feb. 7, 2006). Hence, Claimant has not sustained his burden of proving that his back injury is compensable.

Hip. From his testimony, it appears that Claimant is arguing that he injured his right hip as result of his alleged September 12, 2005 fall. On September 13, he presented to

Dr. Bufford with right hip pain. But x-rays taken at that time showed only degenerative changes in the hip; no fractures or dislocations were apparent. While Claimant continued to present with hip pain in his doctor visits in October 2005 and thereafter, there are no findings regarding the hip in the records. For these reasons, Claimant has not proven that he sustained a compensable injury to his hip because there are no objective findings to support such an injury.

Knee. Claimant's testimony at the hearing and in his deposition comports with his November 7, 2005 statement to Dr. Knox that he twisted his knee when he missed a rung on the ladder while getting off a backhoe on October 19, 2005.

Claimant's first medical visit was on October 23, 2005, where he complained that his knee pain was "worsening." While the record for that visit stated there was no effusion in the knee, and x-rays did not show a dislocation, the MRI taken the next day showed a medial meniscus tear; and his April 2006 surgery confirmed that injury along with a lateral meniscus tear and a degenerative condition.

While some time elapsed between the date Claimant alleges he was injured, on October 19, 2005, and when the injury was confirmed, a causal relationship may be established between an employment-related incident and a subsequent physical injury based on the evidence that the injury manifested itself within a reasonable period of time following the incident, so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 234 Ark. 104, 357 S.W.2d 263 (1962). I find that Claimant has met his burden of proof that he incurred a compensable injury to his right knee.

C. Reasonable and Necessary Medical Care

Under Ark. Code Ann. § 11-9-508(a), an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

Because I find that Claimant's alleged back and hip injuries are not compensable, the issues regarding whether Claimant is entitled to reasonable and necessary medical care for them are moot and will not be addressed. As for the treatment to his right knee, I find that, based on the compensability of the injury and the review of the course of his treatment, including his April 2006 surgery, that such treatment was reasonable and necessary.

Respondents have contended that in no case should they be found liable for any treatment prior to November 7, 2005, when Claimant told Dr. Knox that he injured his knee while descending the ladder from the backhoe. Arkansas Code Annotated § 11-9-701(a)(1) & (b) provides:

(a)(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

. . .

(b)(1) Failure to give the notice shall not bar any claim:  
(A) If the employer had knowledge of the injury or death;  
(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or  
(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

(2) Objection to failure to give notice must be made at or before the first hearing on the claim.

Claimant's uncontroverted testimony was that on the date he injured his knee, he told "Barbara," who worked in the office of Respondent Guy King, about his knee injury. She told him to tell Tony Belk; and Claimant stated that he did so. Belk, who testified that he was the controller of Respondent Guy King, denied that Claimant came in and told him that he hurt himself on the 19<sup>th</sup>. I note that Claimant was consistent in his testimony in his deposition and at the hearing that he had this conversation with Belk.

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* Based upon my observation of these witnesses, I credit the testimony of Claimant over that

of Belk on this point. Thus, irrespective of the legal effect of the conversation with “Barbara,” pursuant to § 11-9-701(b)(1)(A) Respondents are responsible for Claimant’s treatment from the outset. See *Shields v. Swifton Schools*, 2007 AWCC 29, Claim No. F503692 (Full Commission Opinion filed March 20, 2007).

### **CONCLUSION AND AWARD**

Claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his knee as a result of his fall on October 19, 2005, and is entitled to reasonable and necessary medical care, including all treatment of the knee that is set forth in Joint Exhibit 1. His other compensability arguments, along with his claims for additional medical treatment and his Motion to Recuse, are hereby denied and dismissed.

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge