

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F700635

JUSTIN GOOD	CLAIMANT
SUPERIOR INDUSTRIES	RESPONDENT
CROCKETT ADJUSTMENT, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 16, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON 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 on July 24, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on April 12, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On January 6, 2007, the relationship of employee-employer-carrier existed between the parties.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's left knee injury.
2. Related medical.

3. Intoxication defense.

In regard to the foregoing issues the claimant contends that he was injured on January 6, 2007. His left knee was injured while he was installing a mold on a machine.

In regard to the foregoing issues the respondents contend that the claimant reported an injury, he tested positive for marijuana and, therefore the respondents contend this incident was substantially occasioned by the use of illegal and illicit drugs.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1 and the respondents submitted medical records marked respondents' Exhibit No. 1. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that he was thirty years old and began working for the respondent in December 2006. The claimant testified that he was hired to be a mold shop technician and he was also training to be a lead person. The claimant testified that on January 6, 2007, he was training to replace the molds in the mold machine. The claimant testified that a mold has four pieces and each one of these pieces weighs approximately 200 pounds. The claimant testified that these pieces are placed on top of the machine by a forklift and then they are manually slid into the machine. The claimant explained that he would pull and push on the mold until it gets to the two slots that it has to slide into and

then it just drops into place. The claimant testified that the mold pieces are on top of the mold machine and they are approximately waist high. The claimant testified that on January 6, 2007, he was inside the machine sliding one of the molds back toward him to put it into the machine and one side fell into the slot and the other side did not which caused his body to twist and his left knee popped. The claimant testified that this accident occurred about 10:00 in the morning and he noted that he normally got to work at 5:00. The claimant testified that at the time of his accident he fell back and the person training with him, William, caught him and sat him down on the machine. The claimant testified that William called their supervisor who was Carl. The claimant testified that William and Carl helped him down the stairs and put him in a wheelchair and took him to the front office and then to the doctor.

The claimant testified that William Waeltz was showing him where to put his feet and how to stand so that he would have more leverage to slide the mold in order to make it easier. The claimant testified that Mr. Waeltz was right behind him watching him the whole time. The claimant testified that this was the first day he had ever trained at this job.

The claimant testified that he was seen by Dr. Sites and Dr. Sites gave him an injection of Novocaine, took x-rays, and then the doctor took a syringe to draw out fluid underneath his kneecap to see if it was clear or if there was blood in it, noting that it had blood in it. The claimant testified that at that time he could not

bear any weight on his left leg. The claimant testified that Dr. Sites continued to treat him until late February and that the doctor had him under restrictions. The claimant testified that he has not returned to work for the respondent and he cannot afford to go back to see Dr. Sites although the doctor has not released him. The claimant testified that he is still having problems with his knee.

The claimant testified that he returned to work for another employer on February 5, 2007, and is still employed. The claimant testified that he has had two prior knee injuries, one in 1995 and one in 1999. The claimant testified that his 1999 injury happened when he was working for Diamond Equipment Rental. The claimant testified that he was cutting some chain and had all of his weight on his left leg and that his knee popped out. The claimant testified that he was taken to the hospital, x-rayed, given an MRI, and went through rehabilitation. The claimant testified that he missed four days of work as a result of this accident. The claimant testified that he received treatment for his knee for approximately two months following this incident. The claimant testified that between 1999 and his 2007 knee injury he has not had any problems with his knee and has not been limited with any of his activities.

The claimant testified that on New Year's Eve a week prior to his accident he had ingested marijuana. The claimant testified that between New Year's Eve and January 6, 2007, he had not taken or used any marijuana or other drugs. The claimant testified that

on the day of his accident he was not at all affected by any marijuana. The claimant testified that he was aware that he tested positive after his accident for the use of marijuana.

On cross examination, the claimant agreed that in 1995 he injured his left knee while he was in the Air Force. The claimant agreed that following his 1999 left knee injury while working for Diamond Equipment Rental he also tested positive for marijuana on his drug test. The claimant testified that he and his wife both have insurance through their current employment but it was his understanding that he could not get treatment for his knee because it was a pre-existing condition. The claimant agreed that the molds he was working with on January 6, 2007, are in sections and although they weight quite a bit, you would slide them into place not pick them up. The claimant agreed that these sections weight approximately 200 pounds dead weight and that you must use leverage to maneuver them. The claimant further agreed that correct body mechanics are a vital part of not injuring yourself while working with these molds. The claimant testified that he had been high before and in his opinion being high does not affect his coordination or his depth perception. The claimant testified that ingesting marijuana has no effect on him other than making him feel good. The claimant did agree that sometimes when he would feel good he would use poor judgement. The claimant agreed that after his first two knee injuries he took measures to be protective about preventing further injury to his knee. The claimant testified that he laid tile two years before he started to work for the respondent

and that he was up and down on his knees all day long, twisting and lifting heavy tile and he had no problems. The claimant testified that since his knee injury in January 2007 he has gained approximately five to ten pounds. The claimant agreed that he was terminated by the respondent due to failing his drug test.

On redirect examination, the claimant testified that he has never been high at work and that he was not high at work on the date of his accident.

William Waeltz testified that he was working for the respondent in January 2007 as a mold changer. Mr. Waeltz testified that during this period of time he was helping the claimant learn how to change molds. Mr. Waeltz testified that he had been working for the respondent approximately three and a half months before the claimant was hired. Mr. Waeltz testified that he would guesstimate that it would take about a month for someone to learn how to change out a mold. This witness testified that he injured his knee while working with the molds explaining that he was trying to loosen one of the bolts and the key bar snapped and he twisted his knee and it went out. Mr. Waeltz was asked, "would it be unusual working with these molds for someone to hurt a knee?" Mr. Waeltz responded, "well, yes and no: depending on how good your knees are." Mr. Waeltz testified that there are several different ways to maneuver the mold pieces and that he was just letting the claimant try out different ways to try and figure out which was best for him. Mr. Waeltz testified that the work required lifting 150 to 200 pounds. Mr. Waeltz was asked if there was anything about the claimant on

January 6, 2007, that would lead him to believe that he was intoxicated and Mr. Waeltz responded, "No, Ma'am." Mr. Waeltz testified that he was working in the same room with the claimant on January 6, 2007. This witness testified that he is no longer employed by the respondent due to the fact that he missed too many days of work.

On cross examination, Mr. Waeltz testified that he had worked around the claimant for the first time on January 6, 2007. This witness stated that he had been working with the claimant for approximately six hours when his accident happened. Mr. Waeltz testified that he did not know the claimant prior to January 6, 2007, and that he did not know anything about his personality before or after that date. Mr. Waeltz testified that on January 6, 2007, he was standing right beside the claimant and that the claimant went to pick up the side core to drop it and all of a sudden the claimant's knee went out. Mr. Waeltz was asked if he had ever tried to drop a mold like the claimant was doing that day and the witness responded, "Yes, I have." Mr. Waeltz agreed that using this method put a lot of torque on your left knee if you are using this method and it will twist the knee. Mr. Waeltz agreed that if you had a bad knee you would not want to drop it that way.

On redirect examination, Mr. Waeltz testified that during the six hours he worked with the claimant he did not notice the claimant doing anything inappropriate. This witness testified that the claimant followed the directions he was given and had done whatever was asked of him to do.

On recross examination, Mr. Waeltz testified that he came to work at 6:00 in the morning and would not disagree if the accident report indicates that this event happened at 10:55. Mr. Waeltz agreed that this would have been four hours and fifty-five minutes.

The medical records set forth that the claimant was seen at Mercy Health Clinic on January 6, 2007, with complaints of left knee problems. Dr. David Sites examined the claimant and drew fluid off of his knee and diagnosed him with having an acute left knee sprain. X-rays of the claimant's left knee made January 6, 2007, indicates that there is inter articular bodies identified in the tibiofemoral joint which may arise from the anterior or posterior aspect of the tibial plateau. The doctor who read the x-ray notes that these may represent avulsion fracture fragments possibly related to the crucial ligaments and recommended that an MRI be obtained for further evaluation. The claimant was released with the instructions to keep his leg elevated, wear a knee brace, use crutches, bear no weight on his left leg and medications were prescribed. The claimant was released to return to work with restrictions. The claimant was again seen at the Mercy Health Clinic on January 13, 2007, for follow up of his left knee problems. The claimant again was encouraged to keep his leg elevated, apply ice two times a day, medications were prescribed, and an MRI recommended. Dr. Sites writes on January 20, 2007, that the claimant has an acute sprain to his left knee and again recommended an MRI, to use a brace, ice packs, and just partial weight bearing. Medications were also prescribed by Dr. Sites.

Dr. Sites writes on January 26 to the respondent that the claimant is improving and that his pain scale is rated at a three on a scale from one to ten. Dr. Sites notes that upon examination the claimant still has palpable fluid in his left knee joint with tenderness along the medial collateral region and the lateral joint line as well as the patellofemoral area. The doctor notes that there are also physical signs of possible ACL disruption. Dr. Sites writes that the claimant had a left knee injury on July 3, 1999, and x-rays taken at that time show no definite evidence of fracture or dislocation and no free fragments or foreign bodies are appreciated. An MRI done of the claimant's knee in 1999 showed no definite evidence for a meniscal tear. It is noted that there was a great deal of motion on all of the images and a small tear could have easily been missed in 1999. The doctor treating the claimant in 1999 writes that the anterior and posterior cruciate ligaments were intact and the claimant was diagnosed with probable dislocation of his left patella and strain of the medial collateral ligament. Dr. Sites writes that at this time the claimant shows improvement as to his left knee and that his findings are very similar with those which were reported by Dr. Dickinson in 1999 but there is no question that the claimant has reinjured his knee as documented by the blood that was aspirated from his knee joints on January 13, 2007, with other findings. Dr. Sites expressed concern about the findings on the claimant's x-rays taken on January 6, 2007, noting that it could represent avulsion fracture fragments in his left knee joint and for this reason recommended an MRI. There

is a note dated February 2, 2007, that the respondent denied the claimant's MRI. In a lab report dated January 11, 2007, it indicates that blood collected on January 6, 2007, revealed that the claimant tested positive for marijuana. Dr. Sites writes on January 30, 2007, that he has checked the claimant for his acute sprain of his left knee, noting that his x-rays reveal loose bodies in his left knee and possible chondromalacia patella. Dr. Sites notes that the claimant feels the swelling in his left knee is decreasing and his pain is occasionally occurring. Upon examination, Dr. Sites notes that there continues to be evidence of some left knee joint effusion and tenderness. Again Dr. Sites notes that his examination is suggestive of possible medial crucial sprain. Dr. Sites released the claimant to return to work on January 30, 2007, with restrictions of no standing for greater than six hours, no lifting from a standing position, no kneeling or squatting, no operating heavy machinery, and he should use his cane. Dr. Sites recommended physical therapy to intensify the claimant's rehabilitation and to continue his medications and supplement with extra strength Tylenol if needed. The claimant was last seen by Dr. Sites on February 12, 2007, where it is indicated that the claimant's condition with his left knee is improving although his pain continues although intermittent. The doctor notes that upon examination there was no swelling. Again the doctor released the claimant to return to work with restrictions as stated before and it was recommended that he gradually decrease the use of his cane and to use his medications as needed.

After a complete review of this matter, I find that the claimant has overcome the presumption that his accident which resulted in injury was substantially occasioned by the use of marijuana. It is not questioned that the claimant tested positive for marijuana and he in fact testified that on New Year's Eve, six days prior to his accident, he ingested marijuana. The claimant had been working for at least four almost five hours at the time of his accident and the testimony of his coworker was that the claimant responded to all requests appropriately and followed instructions as given. Mr. Waeltz, the claimant's coworker, testified that the method which the claimant was using to maneuver the mold into place was a technique which he himself had used and that he was letting the claimant try different techniques in order to find what worked best for him. The testimony by the claimant as well as Mr. Waeltz is that the molds which the claimant was working with each piece would weigh approximately 150 to 200 pounds and had to be maneuvered into a slot at which time they then would drop. Although it has been testified and the medical records set forth that the claimant did have some prior left knee problems, it had been since 1999 that the claimant had been treated for left knee problems and by his testimony he had done work for the two and a half years before he began working for the respondent which would normally put strain and pressure on his knees and he did not experience problems. I find, therefore, that the claimant was doing his job appropriately and as instructed by his coworker at the time he sustained a compensable injury to his left knee. The

medical records set forth that this claimant has objective medical findings of a left knee injury occurring on January 6, 2007. The respondents, therefore, should pay for the cost of this claimant's medical treatment for his left knee injury.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On January 6, 2007, the relationship of employee-employer-carrier existed between the parties.

3. The claimant has overcome the presumption that his left knee injury was occasioned by the use of marijuana. See discussion above.

4. The claimant has proven by a preponderance of the evidence that he sustained a compensable left knee injury while working for the respondent. See discussion above.

5. The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable left knee injury.

ORDER

The claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left knee while working for the respondent on January 6, 2007.

The claimant overcame the presumption that his left knee injury was occasioned by the use of marijuana.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's left knee injury.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE