

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609461

PENNY MEYER	CLAIMANT
RANDSTAD NORTH AMERICA	RESPONDENT
ESIS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 22, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant appeared pro se.

Respondent represented by TOM HARPER, JR., Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on April 26, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 30, 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 July 11, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$188.00 for temporary total disability and \$154.00 for permanent partial disability.

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

1. Compensability of the claimant's left knee injury on July 11, 2006.
2. Related medical.
3. Defense of lack of notice until August 21, 2006.

In regard to the foregoing issues the claimant contends that she is entitled to have her knee fixed and reasonable and necessary medical expenses.

In regard to the foregoing issues the respondents contend that the claimant did not receive a compensable injury to her left knee on July 11, 2006, or at any other time while employed by respondent. Claimant did not report her alleged injury to respondent until August 22, 2006.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1 and an accident report marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she worked for the respondent at the Hiram Walker plant in Prepack. The claimant testified that she was lifting cases of Kahlua which weighed approximately thirty-four pounds. The claimant stated that they were taking the cases off one pallet and stacking them onto another. The claimant testified

that on Monday everything was fine but on Tuesday she was moving cases of Kahlua and she lifted a case from right to left and switched and felt a pain in her left knee like a burning. The claimant stated that she assumed it was a muscle and did not report the event. The claimant testified that by the end of work her knee was hurting pretty good and the next morning she was in agony but went to work anyway. He claimant testified that on the way out that day she saw Cindy and told her that she had pulled a muscle. The claimant testified that she really did not think anything about it until the MRI report came back indicating that she had a problem. The claimant stated that she did not report the injury immediately because she was in hopes that it would get better.

The claimant testified that after her accident she gave it about a week and her knee had still not improved. The claimant stated that by the time she got an appointment with the doctor it was the 18th of July and that her regular doctor indicated that she had pulled a muscle and he gave her medications as well as recommended that she put ice on her leg.

The claimant testified that she continued to try and do her work but because the boxes were so heavy she just could not do it after a while. The claimant testified that she called and got an appointment with Dr. White on August 2. The claimant testified that she then had x-rays and an MRI and she got the results of her MRI on August 14. The claimant testified that she then went in and talked to the plant nurse and she said it was torn. The claimant testified that the plant nurse, Cindy, sent her to the doctor on

August 21. After being seen by the doctor on the 21st at Cooper Clinic, an appointment was set up for her to see Dr. Bebout. The claimant testified that she was seen by Dr. Bebout and he scheduled surgery but the respondents would not authorize it so she has not undergone the surgery. The claimant testified that she has continued to work every day.

On cross examination the claimant testified that she would see Cindy each day when she would go in and out of the plant. The claimant testified that she was limping and told Cindy she had pulled a muscle and did not say anything else about it because she did not think it was anything. The claimant testified that it was after she got her MRI results around the 14th of August that she made the decision to talk with Cindy to see if she could get some help. The claimant testified that she went to talk with Cindy before August 21st and remembers this because Cindy told her she had to talk to the company and it took a couple of days. The claimant testified that Cindy might have filled out some paperwork that she signed and she does remember that the respondents wanted her medical records. The claimant testified that when she went in to talk with Cindy she told her that she was lifting boxes. The claimant then again described the activity she was doing when her knee began to hurt. The claimant testified that when she first saw Dr. McDonald on July 18th she told him that she hurt her knee and that she was at work. The claimant testified that she is not exactly sure what she did tell Dr. McDonald but she was sure that she told him that she was at work. The claimant was asked if she

knew why Dr. McDonald's report set forth that her knee had been hurting one week and no injury. The claimant responded, "No, because when I went in I could not walk." The claimant testified that she next was seen by Dr. Aaron White who did an x-ray and followed up with an MRI. The claimant agreed that after her MRI she learned that there was a question that she might have a small tear and this was when she made the decision to go and talk to the respondent. The claimant testified that to her knowledge she did not hit her knee noting that all she remembers was that she was lifting boxes. The claimant testified that she did not receive a direct blow to her knee at work or anywhere else. The claimant testified that after Dr. White had her undergo an MRI an appointment was set up for her with Dr. Sherrill, an orthopedist. The claimant testified that this was when she figured out that there was more to it than she had thought and she then mentioned it to Cindy.

Cindy Woods testified that she worked for the respondent in health services on sight at Hiram Walker and is familiar with the claimant. Ms. Woods testified that she is the claimant's supervisor and the claimant is still working and is a good employee. Ms. Wood testified that the claimant formally reported her accident on August 21st and that was when paperwork was filled out. Ms. Wood testified that each day she stands in her door and says hello and goodbye to each employee and that if the claimant ever mentioned anything about a problem she does not remember it. This witness testified that when the claimant came in to report her

injury she was not certain as to the date but opined that it was at least a couple of weeks back so they used the date of August 1st as the injury date. Ms. Wood testified that she sent the claimant to be seen by Dr. Clark and that is the reason his medical report indicates date of injury as being August 1st. Ms. Woods testified that when she first visited with the claimant, the claimant was unsure as to the injury date but when they began to trace it back as to when the claimant started working on the rework project the date had to be sometime after the July 4th break and that the best they could come up with was July 11th. This witness agreed that the claimant was aware that all the injuries were to be reported immediately because that was the respondent's policy. Ms. Woods testified that as soon as the claimant reported her injury she was sent to Dr. Terry Clark on August 21st. Ms. Woods agreed that the claimant did not mention to her anything about a direct trauma, only twisting and bending. Ms. Woods also agreed that the first time the claimant came to her and reported that she had hurt her knee on the job was on August 21st.

On cross examination by the claimant, Ms. Woods testified that she does not have any recollection of the claimant reporting an injury prior to August 21st.

The medical records set forth that the claimant was seen by Dr. Rodney McDonald on July 18, 2006, where it is noted that the claimant has complaints of left knee pain for one week with no injury reported. Set out in the history, which is extremely difficult to interpret, it is noted that the claimant has left knee

pain no injury but some increased lifting at work. It is further noted that she has pain daily and it is constant and getting worse with weight bearing or extension. Medications were prescribed. On follow up, Dr. McDonald writes on August 2, 2006, that the claimant still has left knee pain with no significant improvement. Dr. McDonald scheduled x-rays as well as an MRI. X-rays taken of the claimant's left knee on August 3, 2006, reveal that she has osteoarthritis. The claimant underwent an MRI of her left knee on August 9, 2006, which set forth that there was a question of a small tear in the posterior horn of the medial meniscus and severe bone bruise noted involving the medial femoral condyle with osteoarthritic changes at the medial compartment of the knee joint. The claimant was seen by Dr. Terry Clark on August 21, 2006, where it is noted her date of injury was August 1st. Dr. Clark writes that the claimant was carrying boxes of product and twisting at the same time when she developed pain in her left knee medially. The doctor notes that the claimant reports that her knee has been locking up and she is experiencing an aching sensation. Dr. Clark notes that the MRI which the claimant had done on August 9, 2006, did reveal a small tear in the posterior horn of the medial meniscus and a severe bone bruise in the medial femoral condyle. After examination and review of the claimant's tests, Dr. Clark diagnosed the claimant with left knee strain, torn left medial meniscus, bone bruise, and medial femoral condyle. The claimant was referred to orthopedics and she was restricted at work to limit her climbing, alternate sit, stand, and walk as tolerated with no

squatting or kneeling. Dr. Robert Bebout writes on August 30, 2006, that the claimant reports an injury to her left knee sometime after the Forth of July while she was lifting twenty-five pound cases of alcohol at Hiram Walker that she was putting on pallets. Dr. Bebout writes that the claimant reports she twisted her knee while doing this activity and has been in a lot of pain and has had swelling for the first week but has been icing it down and taking some pain medications. Dr. Bebout notes that her problem is aggravated by walking and weight bearing positions and that she gets some relief when she is off her feet and ices her knee. Upon examination, Dr. Bebout notes some effusion present with the claimant's left knee but that she has normal stability of the knee on stressing. Dr. Bebout writes that the claimant's x-rays of her knee shows some mild degenerative loss of joint spacing and that her MRI reveals that she has a tear of the medial meniscus which is consistent with her symptoms. Dr. Bebout recommended an outpatient arthroscopy and partial meniscectomy on an outpatient basis. Dr. Bebout writes that the claimant will continue working until she has her surgery at a sit down type job. The doctor notes that the claimant will probably need to be off work a couple of weeks post op.

An injury report filed as Respondents' Exhibit No. 2 sets forth that the claimant was injured on August 1, 2006, and first received treatment on August 21, 2006. This report set forth that the injury occurred while the claimant was doing her regular work and described her accident as while bending, stooping, twisting of

stacking boxes or moving boxes of liquor to resticker in the rework department the claimant did something to her left knee. Does not have an exact date of injury just states it was during that week sometime that she was working in rework.

After a complete review of this entire matter, I find that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her left knee while working for the respondent on or about July 11, 2006. The claimant is not a particularly good historian, however she specifically remembers that she was working in rework stickering boxes after the Forth of July break. The claimant does not testify to a fall or some type of blow to her knee but does remember that she was moving cases of liquor weighing approximately thirty-five pounds per case from one pallet to another swinging back and forth when she felt pain in her left knee which has not subsided. The claimant has testified that she had hoped that she had just strained a muscle and this problem would resolve itself with time. When the claimant was initially seen for medical treatment for her left knee on July 18, 2006, she does not report an injury but does report that she does have left knee pain which has increased with lifting at work. The claimant's MRI revealed a small tear in her posterior horn of the medial meniscus along with other findings. I find, therefore, that the respondents should pay for all reasonable and necessary medical treatment for this claimant for her compensable left knee injury. I further find that the claimant did not appropriately report her left knee injury as a work related accident until August 21, 2006.

The claimant has testified that it was her fault that she did not appropriately report her injury and agrees that it was not until around August 21, 2006, that she specifically reported a work related injury to Cindy Woods. The respondent at that time did send the claimant to a physician for examination and treatment. Therefore, the respondents will not be responsible for any of the treatment of this claimant's compensable left knee injury before August 21, 2006.

FINDINGS & CONCLUSIONS

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

2. On July 11, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$188.00 for temporary total disability and \$154.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury while working for the respondent on or about July 11, 2006. See discussion above.

5. The claimant did not appropriately report a work related injury until August 21, 2006.

6. The respondents should pay for all reasonable and necessary medical care for this claimant's compensable left knee injury subsequent to August 21, 2006.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury while working for the respondent on or about July 11, 2006.

The claimant did not appropriately report her work related injury until August 21, 2006.

The respondents should pay for all reasonable and necessary medical care for this claimant's compensable left knee injury subsequent to August 21, 2006.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE