

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F603874

DORIS D. MILLER

CLAIMANT

**PULASKI COUNTY SPECIAL SCHOOL DISTRICT
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED FEBRUARY 15, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on December 6, 2006. A prehearing conference was held on October 10, 2006 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was an April 4, 2006, specific incident.
2. The compensation rate is \$140.

The claimant contends that she sustained a compensable left knee injury when she fell on April 4, 2006. The claimant requests medical benefits for treatment she has received and also requests temporary total disability benefits from April 19, 2006 through June 6, 2006.

Respondents contend the claimant had an accident where she injured her right

ankle and right thumb and benefits for treatment were paid; however, respondents deny the left knee injury and contend that any problems the claimant is having are due to a pre-existing degenerative condition. The left knee has been controverted in its entirety.

ISSUES TO BE LITIGATED

1. Compensability of the left knee.
2. Medical benefits.
3. Temporary total disability benefits.

From a review of the record as a whole, to include 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, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann.

§11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an April 4, 2006, specific incident.
2. The compensation rate is \$140.
3. The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury on April 4, 2006.
4. Respondents are responsible for all reasonable and necessary medical treatment the claimant has received for her left knee.
5. The claimant has also proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from April 19, 2006 through June 6, 2006,

while she remained in her healing period and did not return to work, providing she was not paid her full wages during this period.

DISCUSSION

The claimant, 83 years of age, worked as an aide on a bus that delivered handicapped children to school. On April 4, 2006, the claimant was helping a blind child off the bus and was going to deliver him to his classroom when she fell from the step of the bus. She fell down the steps of the bus and out the door. The claimant landed in a sitting position with her feet out the door. The claimant's right foot was injured the most and her right hand was injured. A nurse from the school tended to the claimant and she did not immediately go to the doctor but proceeded to fill out some paperwork. The school took the claimant home and her daughter took her to the family clinic for her foot. The claimant testified that she was not aware her knee was hurt because her foot was worse. The claimant testified that she called Ms. Williams at the school to tell her about her knee problem a few days after the fall and she was told because she did not report the knee problem at the time of the fall that was denied.

The claimant first saw Dr. W. Joseph for her foot and hand and he took x-rays and bandaged the foot up. The claimant believes her group health insurance paid Dr. Joseph. According to the claimant, she called Ms. Williams and told her that her foot was still hurting and she went back to Dr. Joseph who took more x-rays and decided to refer her to another doctor. The claimant has not been referred to a specialist by Dr. Joseph.

On May 14, 2006, the claimant sought treatment with Dr. Gordon Newbern and he performed arthroscopy surgery on her knee on May 18, 2006. According to the

claimant, she returned to work for three or four days after her April 4, 2006, fall but had to take off after that. She used her sick leave, as she had worked for the school for 11 years.

The claimant contends that her knee still hurts but she can walk on it and has not been back to see Dr. Newbern since May 26, 2006, when he took the stitches out.

Under cross examination, the claimant confirmed that she had right knee surgery in 2002, following a work accident when she was thrown from the bus seat onto the floor with her right knee hitting the iron on the back of the seat after the bus driver ran up on a curb and jerked the bus.

The claimant contends that she injured her left knee in the April 6, 2006, fall as well as injuring her right foot and right hand. The claimant confirmed it was five or six days later that she called Ms. Williams and reported her knee pain. The claimant confirmed that she continues to have knee pain, foot pain and hand pain and needs to see a specialist.

Verleen Williams, claims adjuster for the respondent insurance company, testified that the claimant only indicated on the first injury notice that she hurt her right foot and right hand and that she later reported the left knee injury.

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a

preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2005). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. *Mikel v. Engineering Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury arising out of and in the course of her employment when she fell on April 4, 2006. The claimant was a very credible 83-year old woman who represented herself at the hearing. Credibility of witnesses is properly the province of the Commission which had the benefit of the witnesses' presence to judge their demeanor and determine the weight to be accorded their statements. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996). The claimant was articulate and had an 11-year work history with the respondent employer with a number of accumulated sick days in her bank. The claimant presented a plausible account of her fall on April 4, 2006, and she immediately reported the incident, indicating her right foot and right hand sustained injuries. These were accepted as compensable and the claimant had two doctor's visits to attend to these injuries and respondents accepted responsibility for the medical treatment and paid the claimant \$80 in indemnity benefits. The claimant testified that she began to experience left knee pain after the fall and she testified that she reported the left knee problems about five or six days later but the claims adjuster denied the left knee injury because she did not report it at the time of the incident.

The claimant presented a report from Dr. Gordon Newbern dated June 28, 2006, and he reports that he has treated the claimant previously for her left knee in November 2005, when he performed a MRI. Dr. Newbern's report indicated the MRI showed some subchondral cystic change in the anterior portion of the medial femoral condyle but no other abnormalities were mentioned. Dr. Newbern's report indicates the claimant fell at work in April 2006 and his account was the same as the claimant's testimony at the hearing about her fall and problems thereafter. Dr. Newbern stated the claimant hurt her left knee and right foot during the fall, while the foot had improved, the left knee had not and a new MRI was performed. Dr. Newbern's report stated, in part:

This MRI showed a new finding of posterior horn medial meniscus tear. Since this was a new finding that developed only a few months after the original MRI and since her symptoms substantially worsened since the fall at work, it was logically concluded that the change was attributed to her work-related injury.

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I would be willing to testify in deposition that I believe with a greater than 50% degree of medical certainty that the new medical meniscus tear finding is causally related to the fall and injury to her left knee from the facts that we have regarding Ms. Miller's knee. (Cl. Exh. No. 1, p. 2.)

The May 18, 2006, operative report of Dr. Newbern reveals the claimant had:

1. Complex tear posterior horn medial meniscus.
2. Degenerative interim fraying tear of the lateral meniscus.
3. Grade II chondromalacic changes in all three compartments. (Resp. Exh. No. 1, p. 2.)

Dr. Newbern opined the claimant had reached maximum medical improvement on October 16, 2006 and did assign an impairment rating of 2%. However, the

permanent impairment issue was not an issue to be decided at this hearing.

It is well settled that an employer takes an employee as he finds him and employment circumstances that aggravate pre-existing conditions are compensable.

St. Vincent Infirmary Med. Ctr. v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

While the claimant had some pre-existing left knee pain, Dr. Newbern quite adeptly distinguished her problems in November 2005 and her new problems following the April 4, 2006, fall at work. I give Dr. Newbern's opinions great weight, as well as finding the claimant's testimony credible.

Respondents are responsible for all reasonable and necessary medical treatment the claimant has received for her left knee problems. Ark. Code Ann. §11-9-508.

The claimant also contends that she is entitled to temporary total disability benefits from April 19, 2006 through June 6, 2006. The claimant sustained a scheduled knee injury. The claimant is, therefore, entitled to temporary total disability compensation while she is within her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a)(Supp. 1999); *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The claimant testified that she only worked a few days following the incident at work but did draw from her sick leave. While it is not totally clear to me if she received her full wages from April 19, 2006 through June 6, 2006, I find that she would be entitled to temporary total disability benefits, if she was not paid her full wages. The claimant remained in her healing period and underwent knee surgery and was unable to return to work during that period of time. It is quite possible she drew her full sick pay

and, if that is the case, she would not be entitled to draw both temporary total disability and her full wages.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury on April 4, 2006. Respondents are responsible for all reasonable and necessary medical treatment the claimant has received for her left knee. The claimant has also proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from April 19, 2006 through June 6, 2006, while she remained in her healing period and did not return to work, providing she was not paid her full wages during this period.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE