

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F605774

DOROTHY MILLER, Employee	CLAIMANT
BENTON COUNTY ROAD DEPARTMENT, Employer	RESPONDENT
AAC RISK MANAGEMENT SERVICES, Carrier	RESPONDENT

OPINION FILED SEPTEMBER 19, 2007

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by GAIL O. MATTHEWS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 5, 2007, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 27, 2007, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed between the parties on August 9, 2005.
3. The claimant sustained a compensable injury to her left shin area on August 9, 2005.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment for her compensable injury.

The claimant contends that her compensable injury was primarily to her knee and the lower part of her shin down to the ankle. Claimant contends that as a result of this compensable knee injury she is entitled to additional medical treatment.

The respondents contend the claimant's knee problems are not related to the August 9, 2005 incident.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 27, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable August 9, 2005 injury.

FACTUAL BACKGROUND

The claimant is a 62-year-old woman who has worked for the Benton County Road Department for approximately nine years. Claimant initially worked for the respondent as a heavy equipment operator and subsequently worked as a truck driver.

Claimant testified that on August 9, 2005 she and another employee were in the process of moving a stack of grader blades that weighed approximately 80 pounds. When the other employee picked up one of the blades, the rest of the stack fell over and struck her on the leg, sliding down the front of her leg. According to claimant's testimony there were approximately 30 blades in the stack at that time. Claimant testified that she

reported this incident to her supervisor and sprayed her leg with medicine. When asked if she wanted to seek medical treatment, the claimant indicated that she did not believe she needed to see a physician.

On September 2, 2005, claimant sought medical treatment from Dr. Hristoskova who diagnosed claimant's condition as cellulitis of her left shin and provided medication. According to Hristoskova's medical reports, the claimant subsequently complained of left knee pain and as a result she referred claimant to Dr. Kaler. Dr. Kaler ordered an MRI scan and subsequently offered claimant an injection for her symptoms. According to Dr. Kaler's report, claimant did not want the injection at that time and she did not return to Dr. Kaler until some eighteen months later on April 24, 2007. Recent medical reports from Dr. Kaler indicate that an arthroscopic procedure is now being considered.

Claimant has filed this claim contending that she is entitled to medical treatment for her knee injury which she contends is the result of the August 9, 2005 injury.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 2d 32 (2004).

In this particular case, claimant contends that medical treatment for her knee symptoms is reasonable and necessary because she injured her knee as a result of the accident on August 9, 2005. Specifically, claimant testified that the blades fell and struck her leg from just below the knee down her shin to her ankle. As a result, claimant contends that she is entitled to additional medical treatment for her knee condition.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to medical treatment for her knee. I find

that claimant failed to prove a compensable injury to her left knee.

As previously noted, the respondent accepted as compensable an injury to the claimant's left shin area. However, respondent has controverted a compensable injury to the claimant's left knee. Claimant denied any knee problems prior to the incident on August 9, 2005. However, according to a letter from Dr. Hristoskova dated September 23, 2005, the claimant's left-sided knee pain has existed for approximately two years.

She can bear weight well on the left, except that she is complaining now of some left-sided knee pain, which has been chronic for the last couple of years.

As a result of claimant's left knee pain Dr. Hristoskova referred claimant to Dr. Kaler. Dr. Kaler's medical report of October 5, 2005 indicates that claimant's knee pain began approximately two years ago when she injured her left knee while chasing an inmate. According to Dr. Kaler the claimant had had difficulty walking ever since that incident.

Finally, in a letter addressed to Dr. Hristoskova dated June 29, 2007, she was asked by counsel for respondent whether claimant's left knee pain was attributable to the August 9, 2005 incident or whether it was related to a pre-existing condition. In a handwritten note dated July 10, 2007, Dr. Hristoskova stated:

Please refer to an office note on 9/23/05. The patient was referred to ortho for evaluation of knee pain secondary to an old trauma and not related to Worker's Comp injury on Aug 9/05.

It is claimant's contention that she and Dr. Hristoskova had a language problem which resulted in Dr. Hristoskova misunderstanding her. Claimant testified that Hristoskova misinterpreted a history of a right ankle injury two years ago to have been a right knee injury two years ago. Claimant then contends that Dr. Kaler picked up this same history in his report. However, the history contained in Dr. Kaler's medical report is a little different than the history contained in Dr. Hristoskova's medical reports. While Dr.

Hristoskova did indicate in her reports that claimant had left knee pain for two years, her medical reports do not contain a history of claimant attributing it to an incident while chasing an inmate. That history is only contained in Dr. Kaler's report. Therefore, it is unlikely that Dr. Kaler simply copied the history from Dr. Hristoskova. Such a finding would also indicate that Dr. Kaler did not question claimant as to the source of her left knee condition.

In short, claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury. In this particular case, the compensable injury accepted by the respondent was an injury to the claimant's left shin. Claimant was treated by Dr. Hristoskova for cellulitis of her left lower extremity and released. Claimant was referred to Dr. Kaler for treatment of left knee symptoms. According to Dr. Hristoskova and Dr. Kaler, claimant attributed her left knee problems to an incident which occurred two years earlier. Given these medical reports, I simply find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her knee on August 9, 2005. Therefore, she is not entitled to medical treatment for symptoms relating to her left knee.

ORDER

_____ Claimant has failed to prove by a preponderance of the evidence that she is entitled to medical treatment for her left knee. Therefore, her claim for compensation benefits is hereby denied and dismissed.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$243.75.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE