

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM F407834

**THEODIOUS POWELL,
EMPLOYEE**

CLAIMANT

**J. B. HUNT TRANSPORT, INC.,
EMPLOYER**

RESPONDENT

**INSURANCE COMPANY OF
THE STATE OF PENNSYLVANIA,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED APRIL 27, 2007,

Pursuant to a hearing conducted January 30, 2007, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas, appearing for the claimant, and

Mr. Joseph H Purvis and Mr. William C. Bird, III, Attorneys at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a claim for benefits related to the claimant's bilateral knee problems which he attributes to his employment as a truck driver for J. B. Hunt Transport, Inc.

The claimant contended that on January 25, 2004, he suffered a compensable injury to his right knee, and that this injury caused him to alter his gait which, in turn, caused an injury to his left knee, thus a compensable consequence of his right knee injury. He contended that he should be awarded benefits, including reasonably necessary medical and related expenses and temporary total disability benefits from April 9, 2004, as well as an attorney's fee. Other possible issues were reserved.

The respondents contended that the claimant did not sustain compensable injuries to his knees. Specifically, they contended that the claimant's problems pre-existed his employment and

did not result from an injury at work and, further, that there are no objective findings of injury, although there are objective findings consistent with pre-existing pathology.

The record, which included documentary evidence and the testimony of the claimant, Jimmy James, and Christy Russell, was closed at the conclusion of the hearing consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c).

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the claimant was hired by the respondent employer on or about April 10, 2003; the employee-employer-insurance carrier relationship existed at all pertinent times, including January 25, 2040; and the claimant's average weekly wage was \$552.00.

3. The preponderance of the evidence fails to show that the claimant suffered compensable injuries to his right or left knee, arising out of and in the course of his employment, within the meaning of the Act.

4. A compensable injury to either knee has not been established by medical evidence, supported by objective findings, although there are objective findings consistent with degenerative conditions in both knees.

DISCUSSION

In January, 2004, during a period when he was working as a truck driver for J. B. Hunt, the claimant began to experience symptoms in his knees which caused him to consult his family physician, Dr. Michael Sung. Dr. Sung's note of January 27, 2004, showed that the claimant was complaining of pain in both knees and that the visit was treated as a medical visit, rather than a workers' compensation visit, although the claimant later testified at the hearing that he told Dr. Sung that he had injured his right knee at work.

An x-ray, taken January 28, 2004, was read as showing degenerative changes in the left knee, along with small osteophytes and mild joint space narrowing, but no evidence of an acute fracture dislocation or joint effusion. Similarly, the right knee was seen as having small osteophytes with mild joint space narrowing and no evidence of an acute fracture dislocation or effusion. The report of MRI scans taken January 30, 2004, showed additional detail consistent with degenerative changes, including maceration of the meniscus in each knee. Dr. Sung referred the claimant for additional treatment to orthopedic surgeon Dr. John Yokum.

Dr. Yokum wrote Dr. Sung February 6, 2004, that he had evaluated the claimant, an individual with onset of knee pain just over the past few weeks but no particular antecedent trauma or injury, just had the onset of pain. Dr. Yokum's letter noted that the claimant had bilateral knee arthrotomies back in the 1970's. He also commented that the MRI of the knees suggested medial compartment osteoarthritis and meniscal degeneration. He concluded that the claimant's symptoms were due to osteoarthritis and reported that he had injected both knees with steroids.

Dr. Yokum continued to see the claimant on a monthly basis and performed surgery on the right knee August 18, 2004. He last saw the claimant September 3, 2004. Dr. Yokum's records and

his deposition testimony indicated that the claimant never mentioned that his knee problems were related to an incident at work. Dr. Yokum's deposition testimony also indicated that he asked questions to determine if patients have indeed suffered some kind of injury. Dep. at 8.

Similarly, in his deposition, Dr. Sung indicated an interest in knowing whether the patient's condition was work-related or not. Dep. at 9. He stated that he would have noted it and treated the injury as "workers' comp" if the claimant had told him he had hurt himself at work. Dep. at 12, 13. Indeed, in the previous year he had treated the claimant for a back injury which had been clearly revealed as a work-related condition.

However, on this occasion, the records from Dr. Sung's office and Dr. Yokum's office are not consistent with a specific incident of injury to the claimant's knees at work or elsewhere. At the hearing, the claimant's supervisor also testified that the claimant had said that his knees were bothering him but that he had not hurt himself on the job, although getting up and down on the truck had caused his knees to hurt. He also stated that the claimant said he had experienced knee problems before and he just did not think his knees were going to be able to hold up. The supervisor testified that he told the claimant if he hurt himself on the job it needed to be reported to Workers' Compensation right now.

The insurance adjustor testified at the hearing that she interviewed the claimant in March, 2004, and, when asked, the claimant denied that there was any specific incident of injury but explained that it was from continuously getting in and out of the truck. The adjustor also testified that, when asked if there was a specific date, the claimant said no, and denied stepping wrong and twisting his knee but stated that it just started hurting sometime in January, 2004. Tr. at 76.

However, when the claimant later consulted Dr. Scott Bowen in May, 2005, he then indicated he had injured his knee at work when he got out of his truck and twisted his knee, which was followed by a crunching sensation. This was consistent with the claimant's testimony at the hearing concerning the occurrence of the injury, but with little other evidence of record.

It is well established that the claimant has the burden of proving entitlement to benefits, generally by a preponderance of the evidence and without the benefit of any presumption of compensability or entitlement to benefits.

Under prior law, it was the duty of the Commission to draw every legitimate inference possible in favor of the claimant, and to give the claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence as to meeting the burden of proof be weighed impartially and without giving the benefit of the doubt to any party, including the claimant. Act 10 of 1986, §10(2nd Ex. Sess.), Ark. Code Ann. §11-9-704(c)(4), effective July 1, 1986; Fowler v. McHenry, 22 Ark. App. 196 (1987). Even under prior law, when the claimant was entitled to the benefit of the doubt, conjecture and speculation, however plausible, were not permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791 (1979).

Here, the preponderance of the evidence suggests, at best, that the claimant's injury, or aggravation of his pre-existing pathology, may have occurred as the result of continually getting into and out of the truck at work. However, Ark. Code Ann. §11-9-102 requires proof that such a gradual onset injury resulted from rapid repetitive motion at work and was the major cause of the claimant's disability and need for treatment. On those points, the record fails to meet the requirements of the statute.

It should also be noted that the objective medical evidence is consistent with degenerative problems which developed over a long period of time, rather than a specific incident of injury and, thus, fails to satisfy the statutory requirement that a compensable injury be established by medical evidence, supported by objective findings.

For the foregoing reasons, this request for benefits should be, and it is hereby, respectfully, denied and dismissed.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge