

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310640

RICHARD REDMON	CLAIMANT
OZARK AIRCRAFT	RESPONDENT
NATION UNION FIRE OF PITTSBURGH, INSURANCE CARRIER	RESPONDENT
AIG, TPA	RESPONDENT

OPINION FILED MARCH 23, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on January 8, 2007, in Springdale, Arkansas. A pre-hearing order was entered in the case on October 25, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing and by agreement of the parties, an additional issue was added. This issue concerned the claimant's entitlement to additional temporary total disability benefits from September 12, 2005 through December 12, 2005, and May 16, 2005 to a date yet to be determined. A copy of the pre-hearing order with this amendment noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. On July 20, 2003, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation benefits are \$408.00 for total disability and \$306.00 for permanent partial disability.
3. On July 20, 2003, the claimant sustained a compensable injury to his right knee.
4. There is no dispute over the payment of medical expenses incurred prior to July 1, 2006.
5. Respondents have paid temporary total disability benefits from July 21, 2003 through September 11, 2005 and from December 13, 2005 through May 15, 2006.
6. Respondents have paid permanent partial disability benefits equivalent to a 17% permanent physical impairment to the leg.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to additional medical services after July 1, 2006.
2. The claimant's entitlement to additional temporary total disability from September 12, 2005 through December 12, 2005, and from May 16, 2006 through a date yet to be determined.
3. Whether the respondents have overpaid temporary total disability benefits and permanent partial disability

benefits so as to entitle them to a credit for such benefits.

4. Appropriate attorney's fee.

In regard to these issues, the claimant contends:

"Claimant was squatting down on a tail stand. As he turned and twisted, he tore the medial meniscus in this knee."

In regard to these issues, the respondents contend:

"Respondents contend that all appropriate benefits have been paid with regard to this matter. The claimant was deemed at maximum medical improvement on 5/11/06. A 7 percent permanent partial impairment rating to his right lower extremity was accepted and paid by respondent carrier. Respondents have no documentation indicating additional treatment is reasonable and necessary and related to the claimant's injury.

In addition to contentions previously stated, respondents contend that an audit of this file has indicated that the claimant was overpaid indemnity benefits in the amount of \$8,889.95."

DISCUSSION

I. ADDITIONAL MEDICAL SERVICES

The first issue to be addressed concerns the claimant's entitlement to additional medical services, after July 1, 2006. The burden rests upon the claimant to prove that such medical services are "reasonably necessary" as that term is used in Ark. Code Ann. §11-9-508. Medical services are "reasonably necessary", when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

The only medical services that appear to have been provided to the claimant, after July 1, 2006, is an evaluation by Dr. Michael Hartsfield on July 31, 2006. At that time, Dr. Hartsfield examined

the claimant for complaints of increased swelling and pain in his right knee after an episode of the knee giving way while in Wal Mart. Dr. Hartsfield noted no significant change in the claimant's physical examination following this incident and expressed the opinion that the claimant was not suffering from any serious internal derangement of the knee. His only treatment of the claimant consisted of mild pain medication and anti-inflammatories or anti-arthritic medication. The claimant was also instructed to continue to be as active as possible.

The medical evidence shows that the claimant's initial injury to his right knee occurred on July 20, 2003. Since that time, the claimant has undergone extensive treatment, both for the initial medial meniscal tear and for subsequent recurrent or progressive tears to the medial meniscus. This treatment has included three separate arthroscopic surgery procedures. The medical evidence further shows that the claimant is beginning to experience mild arthritic changes in the knee that are attributable to the compensable injury and the subsequent numerous surgeries it has required. He has also been determined to have experienced a permanent physical impairment of 17 percent to his leg for the compensable injury and the permanent damage it has caused. Clearly, in light of such a permanent injury, some degree of chronic symptoms and exacerbations are expected. Limited medical treatment directed toward the relief of these chronic symptoms and exacerbations would be reasonable and medically appropriate.

It is my opinion that the medical services rendered to the claimant by and at the direction of Dr. Hartsfield, on July 31, 2006, were necessitated by or connected with the claimant's compensable right knee injury, were medically appropriate, and had a reasonable expectation of accomplishing the purpose or goal for which they were intended (i.e. maintaining the level of healing achieved and relief of the claimant's chronic pain complaints). Therefore, these medical services meet the criteria for "reasonably necessary medical services", under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the cost of these services, subject to the medical fee schedule established by this Commission.

II. TEMPORARY TOTAL DISABILITY

The respondents did not pay temporary total disability benefits for the period of September 12, 2005 through December 12, 2005. Nor, have the respondents paid temporary total disability benefits after May 15, 2006. Although the respondents did pay temporary total disability benefits for the period of June 15, 2005 through September 11, 2005, and from December 13, 2005 through May 15, 2006, the respondents now contend that such benefits should not have been paid between June 15, 2005 and September 11, 2005, or after May 11, 2006, and deny that the claimant was entitled to temporary total disability benefits for these periods. The respondents seek credit for this overpayment.

Thus, the periods of temporary total disability that are actually in dispute run from June 15, 2005 through December 12,

2005, and from May 11, 2006 through a date yet to be determined. The burden rests upon the claimant to prove his entitlement to temporary total disability benefits during these periods. In order to be entitled to such benefits, the claimant must show that he continued within his healing period from the effects of his compensable injury and had not “returned to work”, Ark. Code Ann. §11-9-521(a).

The issue of the healing period is a medical question, which must be resolved on the basis of the medical evidence presented. The healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the healing or stabilization of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, at a point where nothing further offers a reasonable expectation of improvement, then the healing period has ended. The mere continuation of chronic symptoms and complaints, no matter how severe, is not sufficient, in and of itself, to extend the healing period.

The medical evidence shows that the claimant was under continuous active medical treatment for actual physical damage caused by his compensable injury from July 28, 2003 through June 15, 2005. During this period, two separate arthroscopic surgeries were performed on the claimant’s right knee. The first was by Dr. Mark Powell on September 29, 2003. The second was by Dr. Theodore Macey, on August 20, 2004. Following the second surgery, Dr. Macey continued to treat the claimant conservatively, with oral

medication and physical therapy, until June 15, 2005. On that date, the claimant appears to have had a falling out with Dr. Macey. In his chart note of June 15, 2005, Dr. Macey notes:

“Mr. Redmon returns for follow up for recurrent right knee pain. The patient comes in today in very hostile mode. He apparently was in work hardening and was unable to participate. I read the work hardening report and he was unable to complete any tasks. He was informing me today that the reason he hurt so bad is because this is his second operation and the original doctor took out 80 percent of the meniscus. I informed him that at the time of the arthroscopy most of the meniscus was intact and in fact more than 80 percent was still present. The patient also complained of pain where he tapped on the lateral aspect of his knee and he would get pain medially. I told him that this was anatomically backwards and impossible.”

Dr. Macey further stated the opinion that the claimant's right knee pain was undetermined etiology, that the claimant was experiencing a hysterical reaction, and that the claimant was malingering. He therefore concluded that the claimant had reached maximum medical improvement, as of that date, and would be subsequently rated. However, Dr. Macey did recommend an MRI scan of the right knee, as a precautionary measure. Curiously, there is no evidence to indicate that this recommended MRI was performed. The claimant was subsequently rated by the physical therapist, on June 28, 2005, with a 10 percent permanent physical impairment to the lower extremity.

It must also be noted that the ongoing work hardening physical therapy program was stopped, based upon Dr. Macey's statement that the claimant had reached maximum medical improvement

on June 15, 2005. Yet, the physical therapist was clearly of the opinion that the claimant could have benefitted from a continuation of physical therapy (report of June 22, 2005-Claimant's Exhibit No. 1, pages 47-49).

The evidence shows that the claimant was unable to obtain any further medical evaluation or treatment, until he was seen by Dr. George Papacostas, on November 1, 2005. Shortly after Dr. Papacostas' initial evaluation, the MRI study of the right knee (originally recommended by Dr. Macey) was finally performed. This study, dated November 22, 2005, was interpreted as showing a high probability of a continuing or recurrent tear of the medial meniscus, as well as mild degenerative changes and some effusion of the knee joint. Based upon these findings, Dr. Papacostas recommended another arthroscopic procedure. Due to the fact that Dr. Papacostas apparently relocated his practice, this third surgical procedure was ultimately performed by Dr. Michael Hartsfield on March 16, 2006. During this surgical procedure, Dr. Hartsfield visually observed abnormalities of the medial meniscus at the junction between the claimant's previous tear and the start of normal tissue. Dr. Hartsfield describes this area of the medial meniscus as "roughened, scarred, and torn".

The medical evidence shows that Dr. Hartsfield continued to provide the claimant with follow up active medical treatment through May 11, 2006. At that time, Dr. Hartsfield noted that the claimant had achieved maximum medical improvement, as of that date, and assessed an additional permanent physical impairment of 7

percent to the leg or 3 percent to the whole person. There is no medical evidence that recommends or identifies any further medical treatment, after May 11, 2006, as having any reasonable expectation of improving the remaining physical damage to the claimant's right knee.

As previously found further medical treatment was and may continue to be periodically necessary to provide the claimant with symptomatic relief and to maintain his knee at a stable state. However, this type of treatment is not directed toward the resolution or improvement of the actual physical damage to the claimant's right knee. Thus, the fact that this treatment may continue to be reasonably necessary does not act to extend the claimant's healing period.

After consideration of all the medical evidence presented, it is my opinion that the greater weight of the credible medical evidence shows that the claimant continuously remained within his healing period from the effects of his compensable right knee injury from the date of its occurrence, on July 20, 2003 through May 11, 2006. In reaching this decision, I have given no weight to Dr. Macey's opinion that the claimant reached maximum medical improvement on June 15, 2005. Had Dr. Macey followed the procedure that he himself recommended and had an MRI study of the claimant's right knee performed, he would have discovered that the claimant was not malingering and that the likely reason that he was unable to participate fully in the work hardening program was the continued presence of damage or tearing of his medial meniscus.

Pursuant to Ark. Code Ann. §11-9-521(a), the claimant must next prove that he had not “returned to work” during the period of July 20, 2003 through May 11, 2006. In regard to this issue, the evidence reveals that the claimant did attempt to return to employment with the respondent, shortly after his compensable injury, but was unable to do so. The record indicates that the respondent did not have any employment positions available that would meet the claimant’s physical limitations from his compensable injury and made no attempt to create such a position. There is no evidence that the claimant was regularly employed for any other employer during this period.

Therefore, I find that the claimant is entitled to temporary total disability benefits for the period beginning June 21, 2003 and continuing through May 11, 2006. The respondents are liable to the claimant for temporary total disability benefits at the appropriate weekly rate during this entire period.

I further find that the claimant has failed to prove that he is entitled to temporary total disability benefits after May 11, 2006. The respondents are entitled to a credit for any temporary total disability benefits they have previously voluntarily paid. The respondents may also apply any benefits they voluntarily paid and categorized as permanent partial disability benefits toward their obligation for the temporary total disability benefits herein awarded.

I would also note that the claimant’s testimony indicates that he applied for and received unemployment benefits during 2004. The

records of the Arkansas Employment Security Division (Respondents' Exhibit No. 2, pages 5-6), show that he received weekly unemployment benefits of \$345.00 for a period of 25 weeks between January 5, 2004 and June 20, 2004. Pursuant to the provisions of Ark. Code Ann. §11-9-506, the respondents would only be liable for temporary total disability benefits during this period in a weekly amount that would be the difference between the claimant's temporary total disability weekly benefit rate and his weekly unemployment benefits. In the present case, the claimant's temporary total disability benefits rate would exceed his unemployment compensation weekly rate by \$63.00 (\$408.00 minus \$345.00). The respondents would be entitled to a credit for the overpayment caused by their payment of temporary total disability at the weekly rate of \$408.00 during this period.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On July 20, 2003, the relationship of employee-employer-carrier existed between the parties.
3. On July 20, 2003, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$408.00 for total disability and \$306.00 for permanent partial disability.
4. On July 20, 2003, the claimant sustained a compensable injury to his right knee.

5. There is no dispute over the payment of medical expenses incurred for the claimant's compensable right knee injury, prior to July 1, 2006.

6. The medical services rendered to the claimant by and at the direction of Dr. Michael Hartsfield, on July 31, 2006, represent reasonably necessary medical services for the claimant's compensable injury. The claimant has proven by the greater weight of the credible evidence that these medical services were necessitated by or connected with his compensable right knee injury and had a reasonable expectation of accomplishing the purpose or goal for which they were intended. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services, subject to the Commission's medical fee schedule.

7. The claimant was rendered temporarily totally disabled by his compensable right knee injury for the period beginning July 21, 2003 and continuing through May 11, 2006. Specifically the claimant has proven by the greater weight of the credible evidence that during this time he continued within his healing period from the effects of his compensable right knee injury and had not returned to work. The claimant has failed to prove that he is entitled to temporary total disability benefits after May 11, 2006. Specifically, he has failed to prove that he continued within his healing period from the effects of his compensable right knee injury after that date.

8. During his period of temporary total disability, the claimant drew unemployment benefits under the laws of the State of Arkansas for a 25 week period at the weekly rate of \$345.00. Pursuant to the provisions of Ark. Code Ann. §11-9-506, the respondents would only be liable for temporary total disability benefits in the amount that his weekly temporary total disability rate would exceed his weekly unemployment benefit.

9. The respondents have controverted the claimant's entitlement to the payment of medical expenses incurred after July 1, 2006 and any temporary total disability benefits during the periods of June 15, 2005 through December 12, 2005 and from May 11, 2006 through a date yet to be determined.

10. A reasonable attorney's fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded (i.e. June 15, 2005 through December 12, 2005).

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period beginning July 21, 2003 and continuing through May 11, 2006. The respondents are entitled to credit for any weekly indemnity benefits previously paid. The respondents are also entitled to credit for an overpayment arising out of the claimant's simultaneous receipt of temporary total disability benefits and unemployment benefits through the State of Arkansas.

The respondents are liable for the expense incurred as the result of medical services rendered to the claimant by and at the direction of Dr. Hartsfield on July 31, 2006. Such liability shall be subject to the Commission's medical fee schedule.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded. One-half of this fee is the obligation of the respondents in addition to such benefits. The remaining one-half of this fee is to be withheld by the respondents from such benefits.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE