

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F605695**

**TAMMY S. SADLER,  
EMPLOYEE**

**CLAIMANT**

**NATIONAL HOME  
CENTERS, INC.,  
EMPLOYER**

**RESPONDENT**

**AMERICAN HOME  
ASSURANCE CO.;  
AIG CLAIM SERVICE,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 9, 2007,**

Pursuant to a hearing conducted December 12, 2006, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. Philip M. Wilson, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Ms. Carol Lockard Worley, Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This was a hearing to consider the threshold issue of compensability of the claimant's knee condition and the related issue of entitlement to benefits.

The claimant contended that in March, 2006, as a result of as many as three incidents, she sustained a compensable injury to her knee and should be awarded benefits, including reasonably necessary medical and related expenses and temporary total disability benefits from June 19, 2006, until a date to be determined. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the claimant did not sustain a compensable knee injury. Specifically, they contended:

1. That there was no event at work which resulted in a compensable injury to the claimant's knee;
2. That there was only the incident of March 8, 2006;
3. That the preponderance of the evidence does not demonstrate the occurrence of a subsequent injury.

They also contended, in the alternative, that, if the claim is found to be compensable, the medical record does not support entitlement to temporary total disability and, further, they would be entitled to credit for unemployment benefits received by the claimant. The respondents also requested that, in evaluating a report from Dr. Pierce dated October 16, 2006, the accuracy of the history relied upon by Dr. Pierce should be considered.

The record, which included documentary evidence and the testimony of the claimant, Carroll James Wing, Terry Mark Sunderland, and Robert Wayne Smith, was closed at the conclusion of the hearing consistent with the Prehearing Order and Ark. Code Ann. §11-9-715(c).

During the hearing, the administrative law judge inquired about the MRI report of April 7, 2006, which had not been offered in evidence. Following the hearing, a copy of the report was proffered as a claimant's exhibit after the record had been closed. The respondents objected and the claimant's request to include the MRI report is hereby denied. However, the report will be included as a proffered exhibit.

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 employee-employer-insurance carrier relationship existed at all pertinent times and the claimant's average weekly wage was \$456.90.

3. The preponderance of the evidence shows that the claimant suffered a compensable injury to her right knee on or about March 22, 2006, for which she is entitled to benefits, including reasonably necessary medical and related expenses previously incurred.

4. The claimant's injury is a scheduled injury and she is entitled to temporary total disability benefits during the healing period until she returns to work, for a period beginning June 19, 2006, and continuing until a date to be determined.

5. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

### **DISCUSSION**

The claimant had been employed by National Home Centers, Inc., since 2003, where her primary duties were working in the warehouse and assisting in delivering and installing refrigerators and other appliances sold by the employer.

At the hearing, the claimant described three incidents involving trauma to her knee. The first and least serious occurred on or about March 6, 2006, while she was putting up stock in a warehouse when she bumped her knee on a box which was sitting on a pallet. The claimant explained that this was not a very significant incident, that she just bumped it and it didn't swell up or anything like that. Tr. at 33, 34.

The claimant described the second and more serious incident as occurring about two days later on March 8, 2006, when she was working on the sales floor, helping take down display racks in order to put them on carts and roll them outside to be placed in the warehouse. She stated that she hit her "...knee on one of the carts - - one of the posts that was on the cart." Tr. at 9. It was not clear from her initial testimony if this post was part of the cart or part of the display rack that had been placed on the cart, although she eventually indicated that the post was part of a big metal rack. Tr. at 32.

Nevertheless, she said that, unlike the previous incident, this time her knee swelled up, got a bruise on it, and hurt, and she reported it to Bobby Smith and he advised her to see Mark Sunderland. Tr. at 10. She stated that the employer offered her forms which she completed, documenting the event. The claimant stated that the incident occurred about lunchtime, but she worked the rest of the day and did not ask to see the doctor and was not sent to a doctor by the respondents. However, she testified that after she began to miss time, afternoons mostly.

The claimant testified that the third incident occurred on March 21 or 22, 2006, away from her place of employment when she was assisting Harry Orr with the delivery of a refrigerator to a residence. She stated that she was still having pain in her knee, and although the swelling had gone down some, the knee was still swollen. She testified that after they had reached the apartment and pulled the refrigerator up some steps, she squatted down to undo the bolts on the bottom in order to remove the door so that the hinges could be changed. When she did this, her knee popped "really loud and it started hurting." Tr. at 14. The claimant stated that this pain was worse than before and she told Bobby Smith, who was the one that could let her go home if she needed to. She testified that the next day, March 23, she told Bobby Smith that her symptoms had increased and he told her

she would have to get with Mark Sunderland. The claimant testified that she showed Mark Sunderland and Janice Hurst that her knee was swollen and explained the refrigerator incident. She went to see the doctor the same day as directed by her supervisors. However, this time, she was not given paperwork to fill out and she thought it was merely a continuation of her March 8 injury.

The record indicates that, over time, the claimant attempted to describe all three of these events to medical providers and her supervisors. However, the various locations, the warehouse, the sales floor, a residence away from work, as well as the range of items involved, a box, a pallet, a display rack, a post on a display rack, railing on a rack, a post on a display rack placed on a cart, a refrigerator, a refrigerator door, and the variety of activity, putting up stock, delivering a refrigerator, squatting down, taking down display racks, storing display racks, could easily lead to less than clear communication. The claimant's matter of testifying at the hearing also demonstrated that it was unlikely that all parties would have the same clear understanding of the events.

Nevertheless, even though the parties may well have only had a partial understanding, their understanding tended to lend some corroboration to the claimant's testimony about the development of her knee problem and her gradual attempt to tell the entire story.

For example, James Wing testified that the claimant eventually told him that she had bumped her knee on one of the racks when they were disassembling racks in the appliance department. He did not recall her saying that she bumped her knee on a pallet or a post. He also confirmed that the claimant filled out paperwork after the incident of March 8 and was given light duty but did not seek and was not offered medical attention.

He also testified that he had no knowledge of a squatting and knee popping incident until after the claimant's MRI of April, 2006, had revealed a torn meniscus. At that time, he asked the

claimant and she described the third incident. He also confirmed that paperwork was filled out after the March 8 incident by Mark Sunderland, but not after the final incident.

Mark Sunderland testified that the claimant reported the March 8 incident and stated that she had hit her knee on a steel rack on the showroom floor but did not mention a pallet or a box or that she had bumped her knee on a post. However, he finally noted that the claimant had written down that she had bumped her knee on a “railing” and that the racks have railings around them to hold material. Thus, although the claimant may not have mentioned a post on the rack, she did mention a railing that was part of the rack. Sunderland also testified that the claimant was not seeking medical care at that time but that her job was modified to some extent.

He also testified that the claimant later came and asked for medical treatment but that she did not describe any other incident at that time. Later, after the MRI report, he was involved in questioning the claimant about her injury and had found it curious that a bump on the knee would cause such an injury. However, he had already testified that the bump on the knee had injured her to the extent that her job duties had been modified. He also testified that, when the claimant did request medical care, she felt that it was because of the March 8 injury and that her leg was bothering her, which was consistent with the fact that her job duties had been modified.

Bobby Smith testified that he had noticed the claimant limping and when he asked her what was wrong she said that she had hit her knee on a rack on the floor which he described as an H-rack. He did not recall the claimant mentioning a pallet or a box or a post or a second incident involving popping or twisting. He stated that the claimant was put on light duty and did complain about her leg on a regular basis, after the March 8 incident.

The medical record tends to attribute the claimant's injury to an incident at work, although there appears to have been some confusion about the exact nature or time of the incident. The medical record also indicates that the claimant suffered three incidents of injury, although the reports indicate that they happened 3 days in a row. The reports tend to indicate that the claimant had an incident with her knee when she was putting up stock and bumped her knee on a pallet but fails to go into the detail about all of the incidents involving trauma. The record does show that when the claimant was seen on March 22, 2006, there was swelling around her knee and, after the MRI report, the medical record reveals that the claimant had a torn medial meniscus. An October 16, 2006, letter from orthopedic surgeon Dr. Tad C. Pruitt indicates that the claimant had described two injuries, one involving a metal bar striking her knee, and the second occurring when she was squatting down and experienced a painful pop. He attributes her torn meniscus to the last injury, which is consistent with the claimant's testimony about her activity when she was delivering the refrigerator.

Although the record is not clear and convincing, the evidence preponderates in favor of the occurrence of a knee injury on March 22, 2006. Previous to that date, the employer was aware of the claimant's knee problems, which arose after the incident on March 8, 2006, and her work duties were modified to some extent. It was generally acknowledged that the claimant was having problems and limping at work during this time, and the claimant felt that the final incident was just a continuation of the March 8 problem. The extent of the March 8 problem cannot be determined because of the lack of a medical record until after the final incident on March 22. Consistent with the claimant's testimony and the opinion of Dr. Pruitt, it was the final incident that resulted in the claimant's compensable knee injury.

There is little dispute over the reasonableness of the medical care received by the claimant. It is also well settled that where a scheduled injury is involved, the claimant is entitled to temporary total disability until the healing period has ended or she has returned to work. The medical record tends to show that the claimant has remained in a healing period, due to her torn medial meniscus, so that she is entitled to appropriate temporary total disability benefits.

**AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge