

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. E613264 & F101926

PEARLINE WILLIAMS, EMPLOYEE	CLAIMANT
L & W JANITORIAL SERVICE, EMPLOYER	RESPONDENT #1
CINCINNATI INSURANCE CO., CARRIER	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2
DEATH & PERMANENT TOTAL DISABILITY BANK FUND	RESPONDENT #3

OPINION FILED JANUARY 9, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on October 12, 2006, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE GEORGE PIKE, Attorney at Law, North Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of an anatomical impairment rating, wage loss disability benefits and attorney's fees.

At issue is whether or not Claim No. E613264 is barred by the statute of limitations pursuant to Ark. Code Ann. §11-9-702; and whether or not the compensable injury is the major cause of the claimant's impairment and wage loss pursuant to Ark. Code Ann. §11-9-102 and §11-9-522. Also at issue is the Fund's liability pursuant to Ark. Code Ann. §11-9-525 and Ark. Code Ann. §11-9-502.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employee-employer-carrier relationship on July 8, 1996 at which time the claimant injured her right knee at a compensation rate of \$133.00. Benefits were paid under File #E613264. An employee-employer-carrier relationship on November 15, 2000 at which time the claimant injured her right knee at a compensation rate of \$136.00. Benefits were paid under File #F101926. The healing period ended December 1, 2005 and the claimant has not worked since her surgery. This claim has been the subject of previous hearings with orders entered by Judge Hogan on May 3, 2002 and May 5, 2004, the Full Commission on March 21, 2003 and April 28, 2004 and the Court of Appeals on February 4, 2004.

The claimant seeks payment of the 37% impairment rating. She contends she is permanently and totally disabled as a result of both of the compensable injuries which ultimately required a total knee replacement. Although the claimant is willing to undergo a vocational rehabilitation evaluation at the respondents' expense, she feels she is not a good candidate for rehabilitation due to her age, 60 (D.O.B. June 25, 1946), lack of transferable skills (the claimant has performed manual labor for the past thirty years) and sedentary work restrictions. The claimant further contends claim #E613264 is not barred by the statute of limitations as the claimant's arthritis was a latent condition.

Respondent No. 1, Cincinnati Insurance, contends claim #E613264 is barred by the Statute of Limitations which ran on July 31, 1998. Furthermore, Respondent No. 1 contends all appropriate benefits have been paid on claim #F101926 and the claimant is not permanently and totally disabled nor is her injury the major cause of her disability. In the alternative, the Second Injury Fund and the

Death & Permanent Total Disability Trust Fund would be responsible for further indemnity benefits.

Respondent No. 2, the Second Injury Fund, contends the claimant sustained a scheduled injury and is not entitled to wage loss disability benefits. The Fund further contends the claimant is not permanently and totally disabled. Alternatively, in the event of an award the claimant's benefits are limited by Ark. Code Ann. §11-9-522(f), limiting benefits to age 65.

Respondent No. 3, the Death & Permanent Total Disability Trust Fund, awaits a determination of the claimant's impairment, wage loss and Second Injury Fund liability before commencing payments. The Fund has not controverted this claim.

The claimant was the only witness to testify at the hearing.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript.

The claimant, age 60 (D.O.B. June 25, 1946) has a high school education. For thirty years she worked as a janitor in her husband's employ.

The claimant sustained two compensable injuries to her right knee. On July 8, 1996 the claimant fell on her knee and received conservative treatment (injections, physical therapy) from Drs. Blankenship and Bowen. She returned to work and reinjured her knee on November 15, 2000 when she slipped and fell. She continued working until January 2001 when Dr. Martin performed surgery for a meniscal tear on January 31, 2001. A total knee replacement was performed by Dr. Rooney in December, 2004. The claimant was assessed a 37% impairment rating and work restrictions.

The claimant testified that although she is pleased with the results of the surgery, she still has pain and swelling but no instability, weakness or coldness in her foot. The claimant testified she is unable to return to her job with the work restrictions assessed by her physician. The claimant filed

for Social Security Disability in 2002 and receives \$882.50 per month (less Medicare).

MEDICAL EVIDENCE

The claimant's medical history has been summarized in prior opinions. Since the last hearing, the claimant has received treatment from Dr. Rooney.

In his deposition, Dr. Rooney opined that the total knee replacement surgery was necessitated by the claimant's preexisting degenerative arthritis (Depo. p. 18). He assessed a 37% rating based on arthritis (Depo. p. 18). Dr. Rooney also recommended the claimant lose weight (see his report of July 14, 2005) and he assessed work restrictions in a report dated August 15, 2005:

I think she is able to perform sedentary type activities. I think she will be restricted in her ability to walk or stand all day, climb, squat and lift and carry more than 25 pounds. These restrictions will most likely be permanent.

Dr. Rooney gave equivocal answers regarding the "major cause" issue, in part, because the claimant gave conflicting information about the extent of her symptoms between the first and second injuries (Depo. p. 11, 16-17). As I interpret the medical records and testimony, Dr. Rooney felt the arthritis developed as trauma from the first injury. The claimant was symptomatic and diagnosed with arthritis in August, 1998. The surgery for the meniscal tear after the second injury made her knee worse resulting in total knee replacement in 2004.

MR. FRYE:

Can you say that more than 50 percent of what you repaired (in surgery) was caused by the November 15, 2000 injury?

DR. ROONEY:

No.

FINDINGS AND CONCLUSIONS

The claimant suffered two compensable knee injuries culminating in total knee replacement. The first injury in 1996 was treated conservatively. The claimant received seven weeks of benefits before returning to work. There was no impairment rating. She developed symptoms and traumatic arthritis was diagnosed in 1998. She took medication and continued to work until 2000 when she reinjured her knee, tearing the meniscus. Total knee replacement was performed in 2004 due to the severity of arthritis found in her knee. She was assessed a 37% rating and work restrictions.

In 1993, the statute of limitations section of the Act was amended declaring that a latent injury could not toll the limitations period of Ark. Code Ann. §11-9-702(g). Therefore, I find claim number E613264 for a 1996 injury is barred by the statute of limitations.

Pursuant to Ark. Code Ann. §11-9-102(4)(F), permanent benefits are available only if the compensable injury is the major cause, more than 50% according to Ark. Code Ann. §11-9-102(14) of the permanent disability or impairment. Based on the medical evidence of record, I find the major cause of the claimant's impairment and disability is the result of arthritis stemming from the 1996 injury. Accordingly, I find respondent No. 1, Cincinnati Insurance Company has paid all appropriate benefits and neither the Second Injury Fund or the Death and Permanent Total Disability Trust Fund has any liability in this case.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on July 8, 1996 and November 15, 2000 at which time the claimant sustained compensable right knee injuries.

2. The claim for the July 8, 1996 injury is barred by the statute of limitations.
3. The claimant developed traumatic arthritis as a result of the 1996 injury which was the major cause of total knee replacement in 2004. The claimant was assessed a 37% rating and work restrictions which have prevented her from returning to the workforce.
4. In 2000 the claimant sustained a torn meniscus. Respondent No. 1, Cincinnati Insurance, has paid all appropriate benefits.
5. Neither the Second Injury Fund or the Death & Permanent Total Disability Trust Fund has any liability in this case.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge