

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F411881**

**RONNIE ANDERSON, EMPLOYEE**

**CLAIMANT**

**STAFFMARK, EMPLOYER**

**RESPONDENT**

**AMERICAN HOME ASSURANCE CO.  
c/o AIG CLAIM SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 4, 2008**

Hearing before Administrative Law Judge Barbara Webb on December 5, 2007, in Little Rock, Pulaski County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on December 5, 2007, before Administrative Law Judge Barbara Webb. A Pre-hearing Order was entered in this case on October 10, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on November 2, 2004, when claimant sustained a fracture to his right leg.

3. The claimant's earnings were sufficient to entitle him to a compensation rate of \$150.00 for temporary total disability and permanent partial disability benefits.
4. The claimant reached maximum medical improvement on August 9, 2006, and was assigned a twelve per cent (12%) impairment rating to the right lower extremity.

### **ISSUES**

By agreement of the parties, the issues to be presented at the hearing are as follows:

1. Claimant's entitlement to additional temporary total disability benefits.
2. Claimant's entitlement to additional medical treatment associated with his right knee and right ankle.

The record consists of a one volume transcript of the December 5, 2007 hearing, consisting of the testimony of Kethia Anderson, Ronnie Anderson, and Sheila Sims and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (November 27, 2007 Note); Respondents' Exhibit No. 1 (Medical records); Respondents' Exhibit No. 2 ( non-medical records); and Respondents' Exhibit No. 3 (Payment History). In addition, I have blue-backed a copy of a post-hearing letter from the claimant which was filed on December 12, 2007, and incorporate the same as a part of the hearing record.

**SUMMARY OF THE EVIDENCE**

Kethia Anderson testified that she married the claimant in October of 2005 and that they have a five month old boy. She was the claimant's girlfriend at the time of his work-related accident. On November 2, 2004, she was contacted by the claimant's mother about the accident and went to the hospital. She explained that the claimant had fractured the lower part of his right leg and was in excruciating pain. He underwent the first surgery to place the external fixator performed by Dr. Rooney the next morning. Two weeks later, Anderson underwent a second surgery performed by Dr. Rooney to repair the broken bones. After an extended recovery and following an independent medical examination by Dr. Nguyen, the claimant underwent a third surgery for removal of the hardware. She testified that Anderson had never had an injury or problems with his right leg prior to the accident. She explained that he currently walks with a crutch, loses his balance due to the right leg being shorter than the left, and remains in constant pain. She testified that he no longer has the quality of life that he had prior to the accident and is not able to do activities or even hold his son without assistance.

Ronnie Anderson is twenty-eight years old (b. 3/4/80). He graduated high school in 1998. He explained that he played football from 4<sup>th</sup> grade to the 12<sup>th</sup> grade which had limited his ability to get work experience. He testified that his work experience since high school has been general labor. He has worked in fast food restaurants and assembly line work, cleaned offices, and installed fences. In late October of 2004, he began working with Staffmark. On his first job, he was

assigned to work at Cherokee Sheetrock in construction. He testified that he was helping a co-worker with a dolly of sheetrock when thirteen sheets of heavy sheetrock fell from the dolly and "chopped into his ankle". He fell to the ground hitting his head and the sheetrock fell on top of him. He lost consciousness. When he regained consciousness, the construction crew was picking the sheetrock off of him and had called an ambulance. He was transported to Rebsamen Hospital. He underwent surgery on his ankle the next day. Two weeks later, he went to St. Vincent's Hospital in Sherwood, for the second part of his surgery. Both bones in his leg were broken and rods were used to hold the bones together. He began therapy approximately a month later. He noticed pain in his knee but was concentrating on what was broken. He completed two different segments of therapy with Dr. Rooney. Dr. Rooney scheduled him for arthroscopic knee surgery but it was cancelled when the insurance company denied the treatment following the MRI. He was subsequently treated by Dr. Nguyen who removed the hardware and recommended additional physical therapy.

He testified that he continues to have pain and is seeking additional medical treatment for his knee and pain management. He testified that he has not returned to work and that he does not believe he could work a regular job due to the pain and swelling in his leg.

On cross-examination, the claimant testified that the longest period of time that he worked prior to the accident was seven to eight months. He testified that his knee began hurting a month or two after his second surgery. He did not return to

work or take the job offered by Staffmark due to his pain. He has not applied for any jobs. The respondents have paid for all of his medical treatment. He explained that he could walk short distances and could work but would be complaining all day. He explained that his only outside activity is when he drives the ten minutes between his mother's house and his mother-in-law's house. He helps with his son but cannot do anything that requires a lot of movement. He can tend to his own personal care but spends the majority of his time in his bedroom. He testified that Dr. Nguyen recommended that he consult with Dr. Turbeville for pain management but that an appointment was never set.

Anderson testified that he was currently under restrictions and could not do any lifting. He explained that he had hoped for a career in arena football but could no longer play sports. He testified that he had played football and attended special education classes in school. He explained that he had always worked in labor jobs that required more muscle than mind. He testified that he talked with Staffmark about a job in 2005 but did not believe he could perform the work since it involved loading luggage at the airport. He had not contacted Staffmark since Dr. Nguyen released him to go back to work in 2006.

Sheila Sims, the claimant's mother, testified for the claimant. She testified that her son and his family lived with her at times and with his mother-in-law at the other times to help him out. She explained that the accident had changed him totally because he was very active prior to the accident and required constant care after the accident. She testified that after the hardware was removed, the claimant

started getting around a little better but still complained of constant pain. She explained that she observed swelling in his leg and fluid on his knee. She remembered that he was told about the fluid on his knee a few months after the accident. She testified that her son had attended special education classes. She testified that he occasionally drives, spends short amounts of time with friends, but spends most of the time at home in bed.

Medical records reflect that Anderson was admitted to Rebsamen Medical Center for treatment on November 2, 2004, for an injury to his right ankle at work when a load of sheetrock fell on his ankle. It was noted that the EMTs had straightened and splinted the ankle at the scene and took him to the ER. He was evaluated by Dr. Rooney and assessed with a displaced fracture distal third right tibia/fibula and given Morphine to control the pain. He underwent surgery the next morning of the right fibula for application of an external fixator for his right lower tibia. He was discharged on November 6, 2004, with pain medication and scheduled to return the following week. A second surgery was performed on November 16, 2004.

On April 4, 2005, the records reflect that claimant underwent an MRI of his right knee at the request of Dr. Rooney. The MRI resulted in an impression of "Mild edema involving medullary bone of the lateral femoral condyle may be secondary to Grade 2-3 chondromalacia involving the overlying articular cartilage. 2. No internal derangement." On May 16, 2005, clinic notes from Dr. Rooney reflect that the claimant returned with complaints of pain from his ankle to his knee. On

physical examination, Dr. Rooney noted swelling above the ankle and very slight effusion in his knee. He noted that x-rays revealed the fracture was well healed and the knee was normal. He advised the claimant that he should be able to go back to work and that there was nothing else to do medically. He noted that he had trouble communicating with the claimant because "he mostly stands listening to his earphones while I am talking with him." He gave him a zero impairment rating based on the Fifth Edition of the AMA Guides. On November 26, 2007, Dr. Rooney wrote that the claimant was scheduled for a right knee scope in surgery on 3-8-05, but was denied by his w/c insurance and therefore surgery was cancelled. He last saw the claimant on 6-14-05.

On April 27, 2005, Staffmark sent a letter to the claimant noting that he was able to return to work with restrictions of no climbing, running, jumping, or carrying more than 35 pounds. The letter further advised "We are able to offer you employment even with these restrictions" and notified the claimant to contact their office for further reassignment. The claimant received the letter on April 29, 2005, as evidenced by the certified mail return receipt.

On March 8, 2006, Anderson was referred for an independent medical evaluation to Dr. Nguyen. He noted that the claimant had previously undergone external fixation and open reduction internal fixation of the distal tibia and fibula by Dr. Rooney on November 16, 2004. He noted that Anderson reported that he had physical therapy but had been unable to return to work due to pain and soreness. Dr. Nguyen found that the claimant had developed anterior tibial tendonitis and

deep peroneal nerve impingement and some arthritis in his ankle due to the extent of the soft tissue injury and large postoperative scarring. He recommended continued ankle exercises for range of motion but noted that his bones were healed such that he could bear weight as tolerated. Due to the complaints of severe pain, he recommended hardware removal and debridement of the anterior tibial tendon and deep peroneal nerve with release. After review of the MRI of the right knee, Dr. Nguyen recommended that the claimant would benefit from knee exercises, ankle exercises, an over-the-counter Neoprene sleeve, and anti-inflammatories for his knee. He noted that he did not see anything that would warrant surgical interventions on his knee. He referred him for a functional capacity evaluation.

On July 26, 2006, the claimant underwent a functional capacity evaluation. The report notes that the claimant exhibited decreased tolerance to kneeling and crouching due to the right ankle with edema present in the medial ankle region post-test. No functional deficits were related to the right knee. It was noted that Anderson completed all aspects of testing without the use of a crutch and gait patterns improved when not utilizing the cane for walking. The report concluded that "Anderson demonstrates the ability to perform work classified in the MEDIUM classification over the course of an 8 hour workday with limitations noted above". It was noted that Anderson was able to lift at the heavy level with an occasional lift of up to 75 lbs, carrying ability in the medium level with an occasional carry of up to 50 lbs, constant reaching, stooping, frequent walking, carrying up to 25 lb, balance and standing, and occasional carrying up to 50 lb, climb stairs, push and pull cart

up to 45 lbs, and crouch and kneel. It was noted that he exhibited lifting tolerances within the heavy category, but due to limited carrying ability and decreased standing and walking abilities, he was restricted to the medium level work classifications.

During the intake interview, Anderson stated that he had been told that his knee was not part of his work-related injury and that he was having no problems with his knee at the time of the evaluation. He reported that the hardware was removed on April 11, 2006, and that he underwent therapy following that procedure. He stated that the swelling was in the high ankle and pain was across the top of his foot near the ankle joint line. He reported that his pain went to a "0" when he was in bed or not putting weight on it.

Payment records reflect that the claimant was paid temporary total disability at the weekly rate of \$150.00 beginning November 3, 2004, until May 3, 2005, for a total amount of \$ 3,900.00 (26 weeks). He was paid additional temporary total disability benefits beginning on April 11, 2006, until July 6, 2006, in the total amount of \$1,380.55 (9 weeks). He was paid permanent partial disability benefits beginning August 9, 2006, until December 12, 2006, for a total amount of \$2,658.00.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on November 2, 2004, when claimant sustained a fracture to his right leg.

3. The claimant's earnings were sufficient to entitle him to a compensation rate of \$150.00 for temporary total disability and permanent partial disability benefits.
4. The claimant reached maximum medical improvement on August 9, 2006, and was assigned a twelve per cent (12%) impairment rating to the right lower extremity.
5. Claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits at the rate of \$150.00 per week for the first healing period of November 3, 2004, until May 3, 2005, and for his second healing period beginning April 11, 2006, until August 8, 2006. Therefore, the claimant is entitled to \$750.00 in accrued unpaid temporary total disability benefits.
6. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment associated with his right knee, i.e. surgery on the knee, in that the evidence does not establish that such treatment is reasonably necessary treatment or that such treatment is related to his work-related accident.
7. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical treatment associated with his right ankle, i.e. referral to a pain management doctor.

**DISCUSSION**

The claimant contends he sustained a compensable injury to his right leg on November 2, 2004, and is entitled to additional medical treatment associated with his right knee and right ankle, and is entitled to all additional disability benefits not paid.

The respondents contend that all appropriate benefits have been paid associated with the claimant's fracture. The respondents contend that the claimant's knee injury is not causally related to his injury of November 2, 2004, that there are no objective findings of the right knee injury, and that respondents should not be liable for benefits associated with same. The respondents further contend the claimant has been released to return to work as of August 9, 2006, and that he is not entitled to further indemnity benefits associated with his work-related injury since he refused further employment with Staffmark. The respondents contend that they paid a 12% impairment rating for the right lower extremity.

**ADDITIONAL TEMPORARY TOTAL DISABILITY**

Claimant is contending that he is entitled to additional temporary total disability benefits for his time off work due to his admittedly compensable injury to his right ankle, leg and knee from November 3, 2004 until a date yet to be determined and was underpaid benefits. Respondents paid to the claimant TTD benefits from 11/03/04 until 05/03/05 and 04/11/06 until 07/06/06 and permanent partial disability benefits beginning 8/09/06 until 12/12/06. The claimant is entitled to temporary total benefits if he can satisfy a two-prong test: (1) claimant must be

within his healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994).

A claimant “who has suffered a scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work.” Ark. Code Ann. § 11-9-521(a) (Repl. 2002); Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

In the instant case, the evidence demonstrates that claimant reached the end of his first healing period after his second surgery on May 4, 2006. Dr. Rooney, his treating physician, reported that he had done all that he could do and that the claimant should have been able to return to work. Claimant entered a second healing period after the surgery by Dr. Nguyen for removal of the hardware on April 11, 2006, and reached maximum medical improvement on August 9, 2006.

In addition, the parties have stipulated that the claimant earnings were sufficient to entitle him to a compensation rate of \$150.00 for both temporary total disability and permanent partial disability benefits. The calendar indicates that five weeks accrued between July 6, 2006 and August 9, 2006. Therefore, as of the date

of the hearing, the claimant's accrued and unpaid temporary total disability compensation was \$750.00.

### **ADDITIONAL MEDICAL TREATMENT**

The respondents have accepted the November 2, 2004, right ankle injury as compensable and paid medical expenses and temporary total disability benefits. However, the claimant asserts an injury to his right knee which he claims first became known in December of 2004. In support of their denial of treatment for the right knee, respondents rely on the medical records which reflect that there was no mention of any knee problem until March or April of 2005.

The claimant points out that prior to the accident he was very active in football and sports and that he currently uses a cane and cannot perform any heavy work, and that he currently suffers from problems with his knee that he had never experienced before. Claimant relies on the medical records of Dr. Rooney to support that the medical treatment recommended by Dr. Barr, including the arthroscopic surgery on his right knee, is reasonable and necessary medical treatment and related to the work-related injury in April of 2005. Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000).

Respondents are responsible only for medical services which are causally related to the compensable injury. Here, there is no dispute that a specific incident occurred in which the claimant suffered a compensable injury to his ankle for which he sought immediate treatment. However, the claimant did not seek medical treatment for his right knee until four months after his injury. In the instant case, Dr. Nguyen opined that there was no need for surgical intervention for the knee and recommended physical therapy which was provided to the claimant by respondents. During the intake interview of the functional capacity evaluation in July of 2006, Anderson stated that he had been told that his knee was not part of his work-related injury and that he was having no problems with his knee at the time of the evaluation. Therefore I find that the medical treatment recommended by Dr. Rooney, including the arthroscopic surgery of the right knee, is not reasonable and necessary or related to the compensable injury.

Claimant also seeks a referral to a pain specialist for continued complaints of pain which he contends was suggested by Dr. Nguyen. However, claimant has failed to offer any medical evidence which supports such a referral. Therefore, based on the evidence before me, I am compelled to find that the claimant has failed to prove that he is entitled to such a referral and treatment by a pain specialist. However, I would note that claimant may be able to establish a right to additional pain management treatment in the future based on further evaluation and proof.

**AWARD**

The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

**IT IS SO ORDERED.**

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**BARBARA WEBB**  
Administrative Law Judge