

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705130

PAULEE BEAL, EMPLOYEE	CLAIMANT
MAVERICK TUBE/TENARIS, EMPLOYER	RESPONDENT
SENTRY INSURANCE CO., CARRIER	RESPONDENT

OPINION FILED FEBRUARY 27, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on January 16, 2008, at Blytheville, Mississippi County, Arkansas.

Claimant represented by the HONORABLE THOMAS W. MICKEL, Attorney at Law, Conway, Arkansas.

Respondents represented by the HONORABLE RICHARD A. REID, Attorney at Law, Blytheville, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits. On November 6, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The original hearing transcript neglected to affix the responsive pre-hearing questionnaires of the parties as a part of the Pre-hearing Order as recited in the record. The afore has been corrected in the official Commission

hearing transcript.

The testimony of Paulee Beal, the claimant coupled with medical reports and other document comprise the record in this claim.

DISCUSSION

Paulee Beal, with a date of birth of February 23, 1973, is a high school graduate, with additional training as a CNA. Further, the claimant has taken some business classes at Mississippi County Community College, however did not graduate. The claimant used her business courses to help with taxes in her mother's consignment store.

The claimant's work history includes working as a CNA in both a nursing home and in home care. Claimant worked in quality control at Fruit of the Loom, and in a warehouse environment at American Greeting.

The claimant commenced her employment with respondent-employer in September 2006. Claimant asserts that she sustained an injury within the course and scope of her employment with respondent-employer on March 1, 2007. Claimant's testimony reflects, regarding her injury:

I had to report to work at 8:00 p.m., that I was new, uh, I wasn't familiar with the building, and they told me to report to the building and report in the break room where the time clock was and someone would meet me there. (T. 12).

After clocking in, claimant continued:

I asked someone where my team leader was and they told me that he was across a catwalk and I asked them which direction to go, and they just said to keep following the catwalk and you'll run into him. And I walked the catwalk and as I was going down the stairs, there was some hydraulic oil there and I slipped down on the hydraulic oil.

* * *

Where I fell at, no one was over there in that area because of the way they had their shift set up, so no one came in on that side until twelve o'clock, I think. (T. 13).

The testimony of the claimant reflects that the surface of the floor was concrete. In describing the mechanics of her fall and resulting injuries, claimant testified:

My hands went down, but my knee actually hit the ground. I kind of braced myself with my hands, but my right knee. (T. 13).

The testimony of the claimant reflects that it was her right knee that struck the concrete surface floor. Claimant testified that she was able to get up. Thereafter, claimant reported the injury to her supervisor, who in turn called the safety man, Danny Harris. Claimant asserts that after the safety man looked at her knee the supervisor was told that her knee injury was not significant enough for the claimant to be sent to the emergency room. The testimony of the claimant reflects that she reported her injury and it was documented/written up. Claimant added that she was furnished a Form N, which she signed.

Despite the assessment of her injury by supervisor personnel claimant testified that she asked to go to a doctor:

Yes, I told them that it was hurting and that when he called Mr. Harris, he was like, "well, no one is here to take you to the emergency room and that they really didn't use the emergency room; just stat at work." And I told him that I couldn't stand and work because I was in pain. And I asked him if I leave and go home, would it count as a point on me. And he told me yes. (T. 15).

Claimant's testimony reflects that she remained at work for six (6) hours of her twelve (12) hour shift, and received a half point. During the six (6) hours that she remained at work, claimant testified:

I went and I swept up the bathroom and I swept the windows

in the ladies bathroom and I stayed - the supervisor, I just stayed over in the little area where they assigned me to. (T. 16-17).

Regarding her symptoms following the accidental fall, claimant testified that the right knee was painful and made it difficult for her to stand and walk. Claimant also noted that the knee started to swell and ached.

Claimant's testimony reflects the point in time that she sought medical treatment relative to her right knee complaints:

I seeked [sic] medical - it happened on a Thursday and I was supposed to work that whole weekend and it was a Thursday, Friday and Saturday and Sunday. I got medical treatment on that following Monday, but I also called Mr. Harris that Friday and reported to him to let him know that I was still hurting and that I felt like it was significant enough for me to come back to Maverick and they take me to the doctor. And he told me that he didn't feel that it was significant enough; that to take Ibuprofin and prop it up and he would make sure that I didn't get a point for that Friday night. (T. 17-18).

Claimant testified that on Monday she went to her family physician, Dr. Reggie Sumner Cullom.

The testimony of the claimant reflects that she relayed a history of her right knee accidental injury at work to Dr. Cullom at the time of the visit. Claimant testified that Dr. Cullom examined her knee but not her hand. Claimant noted that Dr. Cullom prescribed pain medication, gave her a shot, and referred her to Dr. Yoa, a Blytheville orthopedic surgeon.

Claimant's testimony reflects that in addition to the medication Dr. Cullom also placed her on bed rest.

The testimony of the claimant reflects that between March 1, 2007 and October 2007, she did not work due to residuals of her injury. Claimant testified that she was furnished off work slips from Dr. Cullom during the afore period, and that she in turn provided them to respondent-

employer. Claimant maintains that during her follow-up visits with Dr. Cullom he would examine her knee, note the continue presence of fluid, and provide more pills.

Claimant testified that her knee complaints did not improve with Dr. Cullom's treatment. Thereafter claimant was referred to Dr. Yoa. The testimony of the claimant reflects that she experienced some problems with dizziness following the March 1, 2007, fall, for which she underwent testing, however source was never determined. Claimant is not claiming the afore as a part of her workers' compensation claim.

The claimant was initially seen by Dr. Yoa on May 24, 2007, pursuant to referral of Dr. Cullom. Claimant maintains that following the March 1, 2007, accident and up until the time she was seen by Dr. Yoa her right knee remained visibly swollen. The testimony of the claimant reflects that she was furnished with a knee immobilizer, underwent a MRI of her knee, and later underwent arthroscopic surgery on July 12, 2007. Claimant testified that she last saw Dr. Yoa on November 15, 2007. Regarding her failure to return to Dr. Yoa subsequent to November 15, 2007, claimant testified:

No. I didn't like the treatment that he was giving me because I was - he should of - he was supposed to give me another MRI on my knee, and he didn't. And so we decided to see if someone else would take me and see why my cartilage was steadily deteriorating after my fall. (T. 22).

Claimant has not been seen by another orthopedic doctor or specialist for her knee since Dr. Yoa. Claimant's testimony reflects, regarding the current status of her right knee:

Uh, it's about, the pain is, it's on a 6. I have my knee brace on right now. I don't wear it all of the time because it depends on how I move or what I do to it or how long I stand up on it. So the pain, it fluctuates, and I am in therapy right now fo it again. (T. 23).

Claimant is receiving her current medical treatment under the direction of Dr. Cullom. Claimant

noted that Dr. Cullom has also added physical therapy for her back. Claimant explained that her back is bothering her, and offered:

Uh, I feel that my back is bothering me due to my trying to not putting too much strain on my leg and trying to stand up for a long period of time, and it may be pulling a muscle in my back. (T. 23).

Claimant explained the reference to her right arm in her May 2007, medical records:

My knee was hurting and I slipped and fell and I caught myself with my hand, and my hand hit the ground like this (indicating) and I had tendonitis, so I felt that it flared it up once I fell and that's when my hand started hurting, due to my knee. (T. 24).

The testimony of the claimant reflects that the tendonitis was the product of a 1998 injury while employed by Fruit of the Loom which was treated by Dr. Yoa.

The testimony of the claimant reflects that following her July 12, 2007, surgery she suffered another fall:

After my surgery, that was in July. Yes, I had multiple family funerals in July. I was on crutches and I was at home and I went to the doctor in June and July. (T. 24).

Claimant testified that she fell twice, once before the July 12, 2007, surgery and once after the surgery.

With the exception of three (3) days that she attempted to work in October 2007, claimant testified that she has not worked since the March 1, 2007, accidental fall. Regarding the October 2007, work effort, claimant testified:

When I went back to work in October, she - they offered me a eight-hour shift over in a different building as a visual inspector. And they say that you're supposed to be able to sit down and do the work, but you have to have a pole in your hand basically just as long as this banister and you have to take your arm and grind in. But you cannot look inside of the pole to make sure you're hitting where you're supposed

to hit without standing up.

* * *

It's, uh, they're not at eye level. They're up above your head, so you have to bend down like this (indicating) and grind inside to look, 'cause if you're standing up or if you're sit-ting down.

Yes, it's like a finished grinder that like if you sand something, it's like something like that. That's what the grinder is and you're smoothing out a line, a weld line inside of the pipe. (T. 26-27).

Claimant explained that she was unable to do the job because she could not stand up and do it, and when she sit down she was unable to get the weld line.

Claimant continues to wear a brace which was prescribed by Dr. Yoa. The brace was prescribed before the claimant's July 12, 2007, surgery.

During cross-examination claimant testified that she received three (3) weeks of short-term disability benefits, which was all that she was eligible for. Claimant disputes that Dr. Yoa's findings were negative during the arthroscopic surgery. Claimant acknowledge receiving short-term disability benefits in December 2005 because of depression. Claimant concedes that while employed at Fruit of the Loom she had carpal tunnel problems for which she received medical treatment under the care of Dr. Yoa.

Claimant elaborated regarding the May 2007, entry in the medical records of Dr. Yoa relative to her right forearm:

He indicated when I went to see Dr. Yoa for a follow-up visit for my knee, my hand, my arm was swollen. So he did a x-ray on that to see what was going on and I stated to him and let him know that I had fell. (T. 31).

Claimant testified that she was unaware that the report makes no mention of her fall.

Specialists that the claimant saw in connection with her dizziness symptoms included a cardiologist, a hearing specialist, and a neurologist. Regarding the impact of the dizziness on her ability to work, claimant testified:

I went to see - Dr. Cullom sent me there to those other doctors because he didn't know the reason why I was being dizzy after I fell, so he was doing preliminary check-ups to see that I didn't hit my head, which if I did, I didn't remember if I had hit my head or anything.

Yes, for the type of environment that I work in, yes. (T. 32).

Claimant maintains that the medical records that she has seen reflect the presence of swelling in her right knee, disputing that neither Dr. Yoa or Dr. Cullom indicated swelling. Claimant maintains that when released to return to work prior to October 2007, she notified respondent-employer and was informed that they did not have anything for her at the time.

Claimant asserts that at the time of the two (2) falls following her March 1, 2007, accident she was having problems with dizziness. Claimant testified that while she was dizzy before the fall, nevertheless her right knee gave out, got weak and the leg buckled. Claimant attributes the falls to her knee, not dizziness.

The testimony of the claimant reflects that the job that she had before she left respondent required her to walk a lot:

To, uh, I had various, uh, we did, everybody did, pitched in to do when someone wasn't there. So you did multiple things probably more than one time, to write down a eighteen - inch pipe and still see around the pipeline, write one thing and cross it with a paper and stencil it, but like I said, or help try to catch a pipe on a line.

It wasn't lifting. It was basically bracing yourself of fin front of the pipe with your hands like this here (indicating) and keeping the pipe from coming so fast off of the line, from jumping off of the line. (T. 38).

Claimant acknowledged that during her November 1, 2007, deposition she relayed that she was looking for work and had put in applications at various places. Claimant added:

Yes, I filled out other forms, but I also let them know that I was in a Workers' Comp case through Maverick, for it wouldn't be any controversy. (T. 39).

Claimant has continued to look for work since November 1, 2007. While on medical leave claimant was ineligible for unemployment compensation benefits.

Claimant asserts that she filed for unemployment in September 2007, when she was told that they, Maverick, did not have anything for her to return to work to do. Claimant maintains that at the time she was not under a doctor's care so she filed for unemployment.

Claimant acknowledged that she was released from the care of Dr. Yoa, to return on an as needed basis. Claimant returned to Dr. Cullom on her own following the release by Dr. Yoa. Claimant maintains that Dr. Cullom has diagnosed deteriorating cartilage in her right knee, for which he is providing medical treatment with different medications.

Though released to return to work in mid-November 2007, claimant has not return to the employment of respondent. Claimant testified that she is still an employee of respondent and in August 2007, she commenced receiving long-term disability benefits through Maverick. Claimant's long-term disability benefits are 69% of her regular pay or \$969.00, per month.

The medical in the record reflects that the claimant was seen on March 5, 2007, by Dr. S.R. Cullom with complaints of right knee pain attributable to a fall at work. The March 5, 2007, chart note of the claimant reflects under the heading "objective" right knee sore and swollen". Further, the March 5, 2007, chart note reflects a diagnosis of contusion of right knee. (CX. #1, p. 1). While a March 16, 2007, chart note of the claimant reflects a complaint of dizziness/off

balance, it also reflects assessments of vertigo and “contusion of right knee”. (CX. #1, p. 2). Documentation of the claimant’s visits to Dr. Cullom noted the presence of swelling in the claimant’s right knee and an assessment of contusion of the right knee. Further, Certificates of Health Care Provider completed by Dr. Cullom noted the claimant’s complaint as a contusion to the right knee and that the claimant was to remain off work until seen by Dr. Joseph Yoa. (CX. #1, p. 6, 7).

The claimant was ultimately evaluated by Dr. Joseph Yoa, a Blytheville orthopedic surgeon, at the request of Dr. Cullom, on May 24, 2007. A review of Dr. Yoa’s May 24, 2007, office note does reflect as a precipitating factor trauma as a result of a fall at work on Thursday, March 1, 2007, resulting in the fall on the right knee. The office note further reflects that claimant had no prior knee problems. Dr. Yoa’s assessment of the claimant’s complaints were right hand strain and right knee contusion involving the areas of the patella tendon. (CX. #1, p. 32-34). In his follow-up examination of the claimant on July 2, 2007, Dr. Yoa assessed the claimant’s right knee complaint as right knee contusion, degenerative disease includes bone bruise or articular cartilage fracture involving the med fem condyle and/or medial pateller facet . (CX.#1, p. 38).

The medical reflects that the claimant underwent a MRI scan of her right knee on July 5, 2007, at Great River Medical Center, pursuant to a referral of Dr. Yoa. The radiologist report regarding the MRI scan reflects: small right knee effusion with small amount of fluid noted in the right prepatellar bursa, as well as an incidental finding of a mild degree of osteoarthritis. (CX. #2, p. 3). On July 12, 2007, claimant underwent a right knee diagnostic arthroscopy for a preoperative diagnosis of right knee pain medial meniscus, which resulted in a postoperative

diagnosis of “same, right knee chondromaliacia patella.” (CX #2, p. 7). The operative report reflects that the only abnormality note identified was softening to the articular cartilage to the undersurface of the patella. (CX. #2, p. 8).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witness, review of the medical reports and other documentary evidence, application of the appropriate statutory provision and case law, I make the following:

FINDINGS

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.
2. On March 1, 2007, the relationship of employee-employer-carrier existed among the parties.
3. On March 1, 2007, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$280.00/\$210.00, for temporary total/permanent partial disability.
4. On March 1, 2007, the claimant sustained an injury to her right knee arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the period beginning March 2, 2007 and continuing November 15, 2007, less the time period October 4, 5, and October 8, 2007.
6. The respondents shall pay all reasonable hospital, and medical expenses arising out of the right knee injury of March 1, 2007.
7. The respondents have controverted this claim in its entirety.

CONCLUSIONS

The claimant asserts that she sustained an injury to her right knee on March 1, 2007, within the course and scope of her employment which required medical treatment and resulted in

a period of total incapacitation . Claimant seek corresponding medical and temporary total disability benefits as well as controverted attorney fees. Respondents deny that the claimant sustained a injury within the course and scope of her employment which is supported by objective physical findings.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts having compensable sustained subsequent to the effective date of the afore provisions. In order to prove entitlement to workers' compensation benefits for a specific incident injury, as alleged in the present claim, claimant has the burden of proving by a preponderance of the evidence that she suffered an accidental injury, identifiable by time and place, that arose out of and in the course of her employment, caused internal or external physical harm to her body and required medical services by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102 (4)(A)(i). *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102 (16).

The credible evidence in the record preponderates that on March 1, 2007, claimant suffered a fall at work sustaining an injury to her right knee, that the injury was reported to appropriated supervisory personnel of respondent-employer who declined to provide requested medical treatment. The evidence in the record is consistent that the claimant's right knee complaints originated with her March 1, 2007, fall at work. On Friday, March 2, 2007, claimant notified the safety manager, James Harris, that her right knee complaints warranted medica treatment, however was again denied access. Respondents do not provide testimony from either the claimant's supervisor of March 1, 2007, or the safety director, James Harris, to controvert the

claimant's testimony regarding the reporting of the accident or request for medical treatment.

The absence of the testimony of these witnesses who were under the control of respondents raises the presumption that their testimony would have unfavorable to respondent-employer. *Barns v.*

Greenhead Farming, ___ Ark. App. ___, ___ S.W.3d ___, (January 9, 2008).

On March 5, 2007, claimant initiated treatment under the care of her family physician, Dr. S.R. Cullom, for her right knee complaint. As noted above, the chart notes of Dr. Cullom reflects the presence of swelling in the claimant's right knee along with the history of the March 1, 2007, fall at work. There is no evidence in the record to reflect that the claimant experienced any problems with her right knee prior to the March 5, 2007, fall at work. The medical reports in the record sufficiently document the presence of objective finding of injury relative to the claimant's right knee. On July 12, 2007, the claimant underwent arthroscopy on the right knee under the care of Dr. Joseph Yoa, an orthopedic surgeon. Claimant also underwent an MRI scan of the right knee on July 5, 2007, which disclosed objective findings of injury.

The claimant's March 1, 2007, accidental fall resulted in an injury to her right knee. The afore is classified as a scheduled injury, pursuant to Ark. Code Ann. §11-9-521(a). An employee who suffers a scheduled injury is entitled to temporary total or temporary partial disability benefits during the healing period or until returning to work. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The evidence preponderates that the claimant was seen by Dr. Yoa on or about November 15, 2007, and release from the care of same to return on an as needed basis. The evidence preponderates that the claimant remained within her healing period from March 2, 2007, through November 15, 2007, with the exception of October 4-5, and October 8, 2007, when the claimant unsuccessfully attempted to return to work.

Respondents have controverted this claim in its entirety.

Ark. Code Ann. §11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Whether a medical procedure or device is reasonable and necessary is a question of fact. In evidence in the record preponderates that medical treatment received by the claimant relative to her right knee under the care of Dr. S.R. Cullom on and after March 5, 2007, as well as referrals therefrom, was reasonable and necessary in connection with the March 1, 2007, compensable accidental injury to the right knee.

Respondents have controverted this claim in its entirety.

There is not a dispute that the claimant received approximately three (3) weeks of short-term disability benefits, and that she received long-term disability benefits commencing August 2007. Ark. Code Ann. §11-9-411 provides that the respondents would be entitled to a credit to offset their liability for benefits based upon any proceeds the claimant has received from group health or medical insurance policies. However, the later sections of the statute provides that the group disability carriers should be entitled to assert a claim for any such benefits that they have paid to a claimant as a result of a job related injury. Ark. Code Ann. §11-9-411 (c) provides that prior to any final disposition of a claim, the Commission shall determine the amount of any benefits paid by the group insurance carriers and shall direct the respondent to hold such amount in reserve until such time as the group carriers shall assert their subrogation claims. The statute further provides disposition if no claim is made for a period of five (5) years - - payment of the sums to the Death and Permanent Disability Trust Fund. *Sandra Norman v. North Hills Service, Inc.*, Full Workers' Compensation Commission, November 21, 2005 (F408828).

AWARD

Respondents are herein ordered to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$280.00, for the period commencing March 2, 2007, and continuing until November 15, 2007, exclusive of the October 4-5, and October 8, 2007, as a result of the claimant's compensable right knee injury of March 1, 2007. Said sum accrued shall be paid in lump without discount. Respondents may claim credit to offset their liability for benefits pursuant to Ark. Code Ann. §11-9-411.

Respondents are further order and directed to pay all reasonable necessary medical, hospital, nursing, and other apparatus expenses growing out of the claimant's compensable right knee injury of March 1, 2007, to include medical related milage, pursuant to Ark. Code Ann. §11-9-508.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE