

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. D114000**

**DONALD W. EASTON**

**CLAIMANT**

**WEYERHAEUSER  
(SELF-INSURED)**

**RESPONDENT EMPLOYER**

**ORDER AND OPINION FILED SEPTEMBER 16, 2008**

Hearing before Administration Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES STREET, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE JUDY ROBINSON WILBER, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Hot Springs, Arkansas on July 25, 2008. A prehearing conference was held on June 24, 2008 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable December 12, 1981, injury.
2. The compensation rate will be agreed to before the hearing.

The claimant contends that he is entitled to additional medical benefits, specifically bilateral knee replacements, and attorney's fees.

Respondents contend that the knee replacements are not reasonable and necessary and related to the compensable injury in 1981. Medical benefits were controverted in May 2007.

## **ISSUES TO BE LITIGATED**

1. Additional medical.
2. Attorney's fees.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Stat. Ann. §81-1323:

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

1. There was a compensable December 12, 1981, injury.
2. Compensation rates will be agreed to.
3. The claimant has proven by a preponderance of the evidence that the additional medical of bilateral knee replacements are reasonable and necessary and related to his compensable injuries.
4. Respondents are responsible for the reasonable and necessary medical pursuant to Ark. Stat. Ann. §81-1311.
5. The claimant is entitled to attorney's fees pursuant to Ark. Stat. Ann. §81-1332.
6. All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

## DISCUSSION

The claimant, 69 years old, worked for the respondent employer for 32 years. The claimant sustained a compensable injury in 1981, when he was working on a catwalk where he slid off, falling about eight feet onto a concrete slab. The claimant twisted his body and landed on both knees on the concrete. The claimant has received medical treatment over the years, seeing Dr. Murray first and then seeing Dr. Robert Kleinhenz until July 15, 2005. Dr. Kleinhenz retired and the claimant began seeing Dr. Kevin Rudder, with the first visit being January 23, 2006. The last medical report in evidence is from Dr. Rudder dated July 10, 2008. The claimant also saw Dr. Ken Martin on February 12, 2007, for an independent medical evaluation. The claimant is contending that he needs bilateral knee replacements. The claimant has undergone physical therapy, injections and has taken anti-inflammatory and pain medication over the years.

In addition to the claimant's knee problems, he was diagnosed with lymphoma cancer in mid-1997 and, although he was technically still employed by the respondent employer, the claimant was unable to work and retired early. The claimant began taking chemo treatments and his knee treatments were put on hold for a time. While surgery had been discussed before the cancer diagnosis, surgery was delayed after the cancer diagnosis because of risk of infection. The claimant's doctors wanted him to delay any knee surgery until he was five or six years clear of cancer.

The claimant resumed his knee conservative care with injections while treating for cancer. The last series of injections was about May 8, 2008. The claimant testified that he was proceeding with the knee replacements even though the respondent

employer had controverted the medical. The claimant testified that he has to have the steroid injections to be able to walk and while they used to last six to seven months, the injections now only last for four or five weeks.

The claimant confirmed that he last worked for the respondent employer in August 1997 and worked only a few days but found he could not perform his job duties. The claimant applied for social security disability and was declared disabled on August 20, 1997. The claimant also started chemotherapy in mid-1997. The claimant confirmed that in March 2002, he was doing some yard work and he had a flare-up with his knees and took some more injections which helped. In November 2002, the claimant crawled under his house to fix a leak and suffered a set back with his knees and had to have more injections. The claimant also confirmed that immediately following his fall in 1981 he had bruising to both knees and the knees would swell so badly that fluid had to be taken off the knees and shots were given to the knees. The claimant returned to work about a month after the injury and continued to work with restrictions until mid-1997. The claimant confirmed that it was August 2006, that Dr. Rudder again began discussing going forward with knee replacement surgery.

### **ADJUDICATION**

The claimant contends he is entitled to additional medical benefits, to include bilateral knee replacements. Ark. Stat. Ann. §81-1311 provides that an employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for the injury.

Since this is a 1981 injury, the Workers' Compensation Law is afforded a liberal construction. The Court has held that the Workers' Compensation Act is highly remedial and is entitled to a liberal construction; it should be accorded a broad construction and doubtful cases should be resolved in favor of compensation.

*McGehee Hatchery Co. v. Gunter*, 237 Ark. 448, 373 S.W.2d 401 (1963).

The claimant sustained an admittedly compensable injury to both knees in December 1981, when he fell about eight feet off a catwalk, landing on both knees. He has received conservative treatment over the years, to include medication, therapy and injections. The claimant began his care and treatment with Dr. Murray and was referred to Dr. Robert Kleinhenz and treated with him for several years until Dr. Kleinhenz retired. The claimant was referred to Dr. Kevin Rudder and the claimant has remained under the care and treatment of Dr. Rudder.

The claimant continued his employment with the respondent employer until 1997, when he was forced to take retirement due to his condition of Non-Hodgkin's lymphoma and bilateral severe degenerative arthritis. The claimant was found disabled by the Social Security Administration on August 20, 1997 and he began receiving benefits. The claimant has not been employed since 1997.

The claimant testified that he delayed having his knee replacements once he was diagnosed with lymphoma cancer and began taking chemotherapy. The claimant was advised about the risk of infection in an elective surgery and advised to delay such until he was free from chemotherapy for several years. According to the claimant, he was able to get steroid injections in his knees that would give him relief that would last for as long as six months and he was able to delay knee surgery; however, the effects

of the steroid shots has now diminished to only helping for a few weeks. The claimant's treating physician, Dr. Kevin Rudder, has recommended bilateral knee replacements and has given an opinion that the need for the replacements is related to the claimant's work injury. Respondents have requested Dr. Ken Martin perform an independent medical evaluation and give an opinion whether the knee replacements are work related and his opinion differs from Dr. Rudder's.

Dr. Martin opined in his June 4, 2008, deposition that the claimant had typical osteoarthritis, which is tri-compartmental and he could not make the definite causation that a fall on the knee would cause this appearance. Dr. Martin opined that the claimant's x-rays look like typical osteoarthritis or degenerative arthritis and are not due to the 1981 injury. Dr. Martin further opined that when there is a patellofemoral injury it is almost always isolated to that compartment and does not seem to go over the entirety like the claimant's. Dr. Martin also confirmed that he only saw the claimant one time and did spend about 20 minutes with him; although, he spent more time reading his medical reports in preparation for the evaluation.

Dr. Rudder, on the other hand, took over treatment of the claimant from Dr. Kleinhenz in January 2006 and has continued treating the claimant through the present time. Dr. Rudder provided his insight about the claimant's condition in his January 24, 2008, deposition. Dr. Rudder was asked about his thoughts on Dr. Martin's IME report. Dr. Rudder was asked to elaborate on Dr. Martin's different compartments of the knee discussion. Dr. Rudder opined, in part:

Certainly, I'll disagree with that on the record. Uh, the patient falls and has an injury, and I have a recent example. The injury to the knee whether it's the medial compartment,

the lateral compartment, the kneecap compartment uh, any compartment uh, begins to change gait mechanics, and Dr. Martin knows this, but it does, it begins to change the way you walk on your knee. Your range of motion is affected and that range of motion change, as well as the documental or reproducible gait changes uh, cause variability in the way the knee performs. And, again, I'm doing this in real time layman's term. Uh, this leads to measurable and often substantial changes in the way the knee can uh, uh, last or hold up. It is reasonable in my opinion that one is as important as the other in terms of their ongoing relationship as anything else. Now I have to give a small portion anecdotal evidence. Currently, in settlement of a very young man, who had the exact same injury, underwent four operations and eventually had to have a knee replacement because of medial joint-line arthritis that started as patellofemoral arthritis only. He too had an IME from a different physician with the same considerations involved that are in this case, but it was clear that without the initial injury I wouldn't have a 28 year old with a knee replacement, and I think the two – I think that's an example of what's happened here. Now, that would take an on-the-spot argument between Dr. Martin and I, which is not going to happen. But this is my thought based on compensable injuries that I've taken care of since I've been in practice, and the injuries in general. It's not uncommon to have an injury of one joint lead to breakdown of the other joint, and that's understandable, but to say that an injury to one joint can't lead to breakdown to that joint itself is uh, completely a fallacy if you can accept that a joint above or below can be affected as a compensable injury. (Dep., p. 18, lines 18-25; p. 19, lines 1-15.)

Dr. Rudder was asked what role the arthritis played in the claimant's current complaints and his need for treatment and he opined, in part:

Uh, well, the arthritis is a progression over the course of 28 years, in my opinion, instigated from the work that he did specifically, the injury that led to it. Now, hard work can cause arthritis, but an injury is more likely to be the cause, and I only know that because I've seen it. Not only is it reported in literature, but I have firsthand account of what a kneecap injury can lead to devastating results. So, a direct answer of your question is – I've forgotten your question at

this point really.

[Ms. Wilber] Me too. But it's your opinion that the need for the total knee replacement is caused by the 1981 injury basically?

[Witness] Yes. (Dep., p. 24, line 25; p. 25, lines 1-8.)

The claimant has continued to have problems with both knees since his 1981 injury and has continued to pursue conservative treatment through 2007, when respondents controverted the claim, and on his own in 2008. The claimant has taken medicine, physical therapy and steroid injections and finally was unable to get relief and made the decision to pursue the knee replacements as recommended by Dr. Rudder.

Both Dr. Rudder and Dr. Martin have provided good explanations of their opinions on whether the claimant's knee problems are related to the compensable injury or not. After considering the medical evidence and the claimant's testimony, I give greater weight to the opinion of Dr. Kevin Rudder, the claimant's treatment physician, over the opinion of Dr. Ken Martin, the IME doctor. I find the claimant has met his burden of proof by a preponderance of the evidence that the bilateral knee replacements are reasonable and necessary and are related to the claimant's compensable knee injuries. The claimant has continued to treat conservatively since the compensable injury and now cannot get relief. The explanation of Dr. Rudder was consistent with the claimant's explanation of his knee problems over the years and while I have great respect for Dr. Ken Martin, I must give greater weight to Dr. Rudder's opinion in this case. The law provides for a liberal interpretation and the benefit of the doubt resolved in claimant's favor.

Respondents remain responsible for the reasonable and necessary medical

treatment pursuant to Ark. Stat. Ann. §81-1311. Since this injury happened in 1981, the provisions of Act 796 of 1993 do not apply; specifically, the major cause requirement.

**ORDER**

The claimant has proven by a preponderance of the evidence that the additional medical of bilateral knee replacements are reasonable and necessary and related to his compensable injuries. Respondents are responsible for the reasonable and necessary medical pursuant to Ark. Stat. Ann. §81-1311.

The claimant is entitled to attorney's fees pursuant to Ark. Stat. Ann. §81-1332.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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**LINDA K. MARSHALL**  
**ADMINISTRATIVE LAW JUDGE**