

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F712047

JIMMY HOLT, Employee	CLAIMANT
GREAT PLAINS COCA COLA BOTTLING CO., Employer	RESPONDENT
MIDWEST EMPLOYERS CASUALTY COMPANY, Carrier	RESPONDENT

OPINION FILED MAY 30, 2008

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 7, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 27, 2008, and a pre-hearing order was filed on February 29, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his left knee on June 30, 2007.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$378.00 which would entitle him to compensation at the rate of \$257.00 for total disability benefits and \$189.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment.

2. Temporary total disability benefits from October 2, 2007 through a date yet to be determined.

3. Unpaid mileage.

4. Attorney fee.

At the time of the hearing claimant modified his request for temporary total disability benefits to include October 30, 2007 through a date yet to be determined.

The claimant contends that he is entitled to additional medical treatment for his compensable injury. He also requests temporary total disability benefits from October 30, 2007 through a date yet to be determined, unpaid mileage, and an attorney fee.

The respondents contend that claimant is not entitled to any additional compensation benefits for his compensable knee injury.

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 witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on February 27, 2008, and contained in a pre-hearing order filed February 29, 2008, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$378.00 which would entitle him to compensation at the rate of \$257.00 for total disability benefits and \$189.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left knee injury. This includes, but is not limited to, medical treatment provided by Dr. Allard.

4. Claimant is entitled to temporary total disability benefits beginning October 30, 2007 through a date yet to be determined.
5. Respondent is liable for payment of all unpaid mileage which claimant has incurred as a result of his medical treatment.
6. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

### FACTUAL BACKGROUND

\_\_\_\_\_The claimant is a 29-year-old man who began working for the respondent in June 2006 as a Snapee driver. Claimant's job required him to drive a truck to various towns in Northwest Arkansas and fill vending machines with drinks and snacks.

On June 30, 2007 as the claimant was stepping out of the back of his truck he slipped on a wet shop floor and hyper-extended his left knee. Claimant reported the incident to respondent and was referred to Quick Care Medical Clinic where he was evaluated on several occasions by Dr. Lewis and Daniel Briley, a physician's assistant.

Claimant was initially evaluated by Dr. Lewis on July 2, 2007. Dr. Lewis diagnosed claimant's condition as a left knee strain. Claimant was instructed to ice down his knee and elevate it at night. Dr. Lewis prescribed claimant medications, work restrictions, and a neoprene knee support. On July 18, 2007 Dr. Lewis noted potential instability in the claimant's left knee and ordered an MRI scan. An MRI scan was performed on July 26, 2007 and was read as showing a strain of the anterior cruciate ligament.

Following that MRI scan claimant was next evaluated by Dr. Lewis on July 30, 2007 with a diagnosis of a resolving left knee sprain. She continued claimant's medication, exercises, and his use of a brace for support. She also noted that this was a final report.

Claimant returned to see Briley on October 9, 2007. Briley notes in his report of that date that claimant's knee had never quit hurting and that he had a sensation of the

knee wanting to give way. Briley continued claimant on medication and referred him to an orthopaedic surgeon for an additional evaluation. Respondent denied claimant's entitlement to additional medical treatment subsequent to the referral to the orthopaedic surgeon.

On October 30, 2007 claimant sought medical treatment from the Siloam Springs Hospital. Claimant was given crutches and was referred to an orthopaedic surgeon. Claimant was not evaluated by an orthopaedic surgeon until he was evaluated by Dr. Allard on April 14, 2008. Dr. Allard's medical report of that date indicates that he reviewed claimant's July 2007 MRI scan which he interpreted as revealing an increased signal in the claimant's ACL and an increased signal in the posterior horn of both menisci. Dr. Allard believed that the claimant had a significant meniscal injury to his left knee and ordered another MRI scan.

The second MRI scan was performed on April 21, 2008. That scan was interpreted by Dr. Allard in his report of April 25, 2008 as showing an abnormal medial meniscus and a tear in the lateral meniscus. He also noted that the claimant's ACL was not normal. Based upon those findings, Dr. Allard scheduled a scope procedure for May 15, 2008, one week after the date of the hearing.

The respondent accepted as compensable an injury to claimant's knee on June 30, 2007. In addition, respondent paid for claimant's medical treatment through October 9, 2007, the date Briley referred claimant to an orthopaedic surgeon. In addition, respondent provided claimant with modified duty and claimant continued to work for the respondent until approximately October 2007.

Claimant has filed this claim contending that he is entitled to additional medical treatment for his compensable left knee injury. In addition, he seeks payment of temporary total disability benefits beginning October 30, 2007 and continuing through a date yet to be determined. He also requests payment for unpaid mileage and a controverted attorney

fee.

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### ADJUDICATION

\_\_\_\_\_A claimant has the burden of proving by a preponderance of the evidence that they are entitled to additional medical treatment for a compensable injury. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left knee injury. This additional medical treatment includes, but is not limited to, medical treatment from Dr. Allard.

As previously noted, respondent initially accepted this injury as compensable and referred claimant to the Quick Care Medical Clinic for treatment. At that clinic claimant was evaluated by Dr. Lewis and Daniel Briley, a physician's assistant. Dr. Lewis diagnosed claimant's condition as a left knee strain and this was confirmed on an MRI scan performed on July 26, 2007. Although Dr. Lewis indicated on July 30, 2007 that her report of that date was a final report, it is also clear from a review of Dr. Lewis's report of that date that claimant's condition had not completely resolved. In fact, Dr. Lewis continued claimant on medication and instructed him to continue performing his exercises and using a brace for support.

Claimant subsequently returned to see Briley on October 9, 2007. Briley's report indicates that claimant informed him that his knee had never quit hurting and that he had a sensation of his knee wanting to give way. As a result, Briley referred claimant to an orthopaedic surgeon for an additional evaluation. Despite this referral by a medical provider chosen by the respondent, respondent denied claimant any further medical treatment. As a result, claimant sought medical treatment on his own from the Siloam Springs Hospital on October 30, 2007. Claimant was given crutches and referred to an

orthopaedic surgeon. Claimant was not able to see an orthopaedic surgeon until he was evaluated by Dr. Allard on April 14, 2008. Dr. Allard, a specialist, reviewed the MRI scan which had previously been ordered by Dr. Lewis in July 2007. Dr. Allard's review of the July 2007 MRI was different than that of the radiologist and Dr. Lewis. Dr. Allard indicated that his review of that scan revealed an increased signal at the ACL as well as an increased signal in both menisci. Based upon his review of the claimant's July 2007 MRI scan, it was Dr. Allard's belief that the claimant had a significant meniscal injury to his left knee. Dr. Allard ordered a second MRI scan which according to his report of April 25, 2008, revealed an abnormal medial meniscus and a tear in the lateral meniscus. As a result, Dr. Allard scheduled a surgical procedure for May 15, 2008.

Based upon the foregoing evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left knee injury. The evidence indicates that respondent accepted claimant's left knee injury as compensable and referred him for medical treatment. The medical providers chosen by the respondent eventually referred claimant to an orthopaedic surgeon for an evaluation. That evaluation was denied by the respondent. Claimant subsequently sought medical treatment from the Siloam Springs Hospital and was again referred to an orthopaedic surgeon for an evaluation. Claimant was evaluated by Dr. Allard and his review of the July 2007 MRI indicated that claimant had a meniscal injury to his left knee. This was confirmed by a second MRI. I find that Dr. Allard's opinion is credible and entitled to great weight. Accordingly, I find that claimant has met his burden of proof.

In reaching this decision I do note that there are some issues which should be addressed. First, the evidence does indicate that claimant had previously sought medical treatment for his left knee in December 2004. Medical records from the emergency room in Bentonville indicate that claimant was seen for complaints of left knee pain. The medical

report indicates that there was no history of injury and that claimant's pain had begun one month ago and had worsened over the last week. Claimant was diagnosed with left knee pain and given a prescription of Ibuprofen. He was also instructed to receive follow-up treatment from Dr. McKenzie. Claimant did not receive follow-up treatment from Dr. McKenzie and apparently did not receive any additional medical treatment for his left knee until after the compensable injury of June 30, 2007, some two and a half years later.

It should also be noted that claimant admitted that he had some pain in his knee caused by prolonged standing after he began working for the respondent in 2006. However, there is no indication that claimant sought any medical treatment for these complaints.

I also note that the radiologist reading the MRI scan of April 21, 2008 indicated that claimant may have had a history of a previous repair on his ACL. However, the radiologist also noted that further clinical correlation is needed. Claimant specifically testified that he had undergone no prior surgeries on his left knee. Further, there is no indication that there was any further clinical correlation establishing a prior surgery. Dr. Allard's medical reports do not contain any indication that he believed that the claimant had undergone a prior surgery on his left knee. I also note that at the hearing the claimant exhibited his left knee and I observed no scarring or any other outward indication which would indicate that claimant had undergone prior surgery.

In summary, although the claimant did have one occasion where he sought medical treatment for his left knee prior to his compensable injury, that occurred more than two and a half years earlier. The parties have stipulated that claimant suffered a compensable injury to his left knee on June 30, 2007. Whether this would be considered a new injury or even an aggravation of a pre-existing condition, the respondent is liable for all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Based upon the evidence presented, I find that claimant is entitled

to additional medical treatment for his compensable left knee injury.

I also find that claimant is entitled to temporary total disability benefits beginning October 30, 2007 and continuing through a date yet to be determined. Although respondent had previously provided modified work for the claimant, claimant was taken off work by the physicians at the Siloam Springs Hospital as of October 30, 2007 until he could be evaluated by an orthopaedic surgeon.

The injury to claimant's knee is a scheduled injury. An employee who suffers a scheduled injury is entitled to receive temporary total disability benefits or temporary partial disability benefits during their healing period or until they return to work, whichever occurs first, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Here, based upon the medical evidence presented, I find that claimant has remained within his healing period since the date of his injury. In addition, I also find that claimant has not returned to work since October 30, 2007, the date claimant was taken off work by the physicians at the Siloam Springs Hospital. Accordingly, I find that claimant is entitled to temporary total disability benefits beginning October 30, 2007 and continuing through a date yet to be determined.

Finally, claimant testified that he has not been paid for mileage incurred as a result of his visits to the medical providers for his compensable left knee injury. I find that respondent is liable for payment of all unpaid mileage incurred by the claimant in connection with his compensable injury.

Because claimant's compensable injury occurred after July 1, 2001, the claimant's attorney fee is governed by the amendments made by the Arkansas General Assembly in 2001. Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the

indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

### AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable left knee injury. He has also proven by a preponderance of the evidence that he is entitled to temporary total disability benefits beginning October 30, 2007 and continuing through a date yet to be determined. Finally, respondent is also liable for any unpaid mileage incurred by claimant in connection with his compensable injury. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$414.50.

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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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE