

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F800485

WILLIAM THOBY	CLAIMANT
BROMLEY PARTS & SERVICE, INC.	RESPONDENT
HARLEYSVILLE MUTUAL INSURANCE, INSURANCE CARRIER	RESPONDENT

OPINION FILED **AUGUST 14, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL WRIGHT, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 2, 2008, in Springdale, Arkansas.

A pre-hearing order was entered in this case on March 12, 2008. A pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the pre-hearing order was amended to reflect that the alleged injury date was October 1, 2007 (rather than November 6, 2007) and the claimant withdrew the issue of his entitlement to temporary total disability benefits. A copy of this pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On October 1, 2007, the relationship of employee-employer-carrier existed between the parties.

2. The appropriate weekly compensation benefits are \$447.00 for total disability and \$335.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to his left knee as the result of a specific incident on or about October 1, 2007.
2. The claimant's entitlement to medical services.
3. Effect of notice provision of Ark. Code Ann. §11-9-701 on any benefits accruing prior to January 10, 2008.
4. Whether any medical services represent "unauthorized" medical services under Ark. Code Ann. §11-9-514.

In regard to these issues, the claimant contends:

"On November 6, 2007, while on a job site, claimant slipped on the threshold and injured his left knee."

In regard to these issues, the respondents contend:

"Respondents contend the claimant did not receive a compensable injury on or about November 6, 2007, as suggested in claimant's pre-hearing information filing and claimant's AR-C filing. In the alternative, respondents contend the claimant failed to properly notify the employer, sought and received unauthorized medical treatment prior to notifying the employer of an alleged injury and otherwise failing to give the employer the opportunity to select any initial treating physician for any alleged injury, if any such injury occurred. It should also be noted the respondents have not been allowed by claimant's attorney to take a statement from the claimant in order to possibly clarify some of these issues and therefore this pre-hearing filing is made without the benefits of having any information from the claimant about his alleged injury, how it supposedly occurred or where it supposedly occurred."

DISCUSSION

I. COMPENSABILITY

The central issue in this case is whether the claimant sustained a "compensable injury" to his left knee, as the result of a specific employment related incident on October 1, 2007. The burden rests upon the claimant to prove all of the facts necessary for an injury to be "compensable" under the Act.

The first of these required facts are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the claimant "establish by medical evidence" the actual existence of the physical injury or condition which is alleged to be compensable. The claimant must further prove that the actual existence of this physical injury or condition is supported by "objective findings", as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical evidence readily "establishes" the actual existence of a physical injury or condition involving the claimant's left knee. In fact, the medical evidence establishes the existence of two separate conditions. The first of these conditions is in the form of degenerative arthritic change involving the cartilaginous or chondral covering of the bones in the knee joint. The second of these conditions is in the form of a tear of the medial meniscus and lateral meniscus of the left knee. The existence of both of these types of injuries or conditions is amply demonstrated by objective radiographic findings and by the visual observations of Dr. Christopher Arnold, during the arthroscopic procedure that was performed on December 26, 2007. Therefore, the claimant has satisfied the statutory requirements for a "compensable injury" to his left knee that are contained in Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove that these medically established and objectively documented physical injuries, which involve his left knee, satisfy the definitional requirements for a compensable injury, that are contained in Ark. Code Ann. §11-9-102(4)(A)i). These definitional requirements are:

- (1) The physical injury or condition must arise out of and occur in the course of the employment.
- (2) The physical injury or condition must be caused by a specific incident.
- (3) The physical injury or condition must be identifiable by time and place of occurrence.
- (4) The physical injury or condition must result in internal or external physical harm to the body.
- (5) The physical injury or condition must require medical services or result in disability.

_____ In order to satisfy the first three definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must prove by a preponderance of the credible evidence the presence of a causal relationship between one or more of the medically established and objectively documented physical injuries or conditions, involving his left knee, and a specific employment related incident. However, the claimant need not show the existence of this causal relationship to an absolute or even mathematical certainty. He need only show that the existence of this causal relationship is likely or probable. Further, he need not prove that the specific employment related incident was the sole or even the "major cause" of the physical injuries or conditions. It is only necessary to prove that the employment related incident contributed to the ultimate injury or condition. A compensable injury may be in the form of a pre-existing condition.

The medical evidence presented clearly shows that the claimant had experienced difficulties with his left knee for a considerable period of time prior

to October 1, 2007. In fact, he had undergone a surgical repair of his meniscus by Dr. James Arnold (Dr. Christopher Arnold's father) in the 1990's. Following this surgery, the claimant continued to experience periodic episodes of difficulties with his left knee. Some of these difficulties were attributed to degenerative arthritic changes of the joint and others to "mechanical" or possible meniscal defects. In his report of March 17, 2005, Dr. Christopher Arnold specifically noted that the claimant had increased difficulties with his left knee, which are more "mechanical in nature", rather than arthritic. Dr. Arnold opined that these difficulties appeared to be due to a meniscal tear, rather than a degenerative chondral defect. On physical examination of the claimant's left knee, on March 17, 2005, Dr. Arnold noted essentially the same abnormal findings that he observed during the physical examination of the claimant's left knee on October 2, 2007. Subsequent records from Dr. John Gaston (the claimant's family physician) and Dr. Arnold reveal that the claimant continued to have difficulties with his left knee through July 12, 2007.

However, it would appear from these medical records that the claimant's left knee difficulties were not sufficient to cause either of these physicians to recommend any further diagnostic testing or any aggressive treatment, such as an arthroscopy of the left knee. I would further note that after this episode of complaints the claimant continued to perform his regular employment activities with the respondent, without limitations or complaint. The employment activities would have placed significant stress on his left knee and would have been difficult, if not impossible, to perform with the subsequently observed large meniscal tears, without apparent distress or limitations.

The claimant's own testimony is the only direct evidence he has offered to prove both the occurrence of a specific employment related incident, on

October 1, 2007, and to establish a causal relationship between this incident and his subsequent left knee difficulties that culminated with the corrective arthroscopic surgery on December 26, 2007. Although the testimony of a party is never considered uncontradicted, this does not mean that such testimony can be arbitrarily disregarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address.

The claimant testified that he could not "remember exactly" what transpired on October 1, 2007. However, he stated that, on that date, he was performing his assigned employment activities of repairing commercial restaurant equipment at the McDonald's Restaurant in Lowell, Arkansas. As he was going out to his truck to get "something", he slipped on the stainless steel threshold of the back door of the restaurant and twisted his left knee. He stated that he immediately experienced a sensation in his left knee "like an electrical shock". However, he did not fall or even experience any pain, at the time of the incident. Instead, he continued to perform his employment activities. He testified that approximately 40 to 45 minutes later, his left knee started swelling and he began experiencing more of the "electrical shock" sensations.

The claimant further stated that, on October 1, 2007, he attempted to call the owner of the respondent, Diane Mansfield, but was unable to speak with her. He then phoned Preston McKelton, the tech supervisor and the claimant's supervisor. The claimant stated that he informed Mr. McKelton of the incident and his left knee difficulties. According to the claimant, Mr. McKelton instructed him to go to the emergency room at the hospital. The claimant stated that, when he attempted to be seen at the hospital emergency room, he discovered

that there was going to be a considerable wait before he could be seen. The claimant describes again calling Mr. McKelton and advising him of the situation at the emergency room and of his desire to see his own doctor (Dr. Arnold) the following morning. It was the claimant's testimony that Mr. McKelton advised him that it would be acceptable for him to see his own doctor the following morning.

The claimant also testified that he wrote on his time sheets for October 1 and October 2 of 2007 that he had gone to the emergency room and to Dr. Arnold for knee difficulties. These sheets were regularly sent in to the respondent employer's main office in Little Rock. Curiously, neither party offered any of the claimant's time sheets into evidence.

The claimant indicated that he took off work for a brief period of time (several days) immediately after October 1, 2007. He then returned to regular duty and continued to work for the respondent, until he took his vacation on December 20 or 21 of 2007.

The claimant also testified that approximately a week after his injury, he reported (by phone) the incident and onset of the left knee difficulties to the maintenance supervisor for the respondent. Finally, he described a conversation about his left knee injury that he had with Diane Mansfield, the owner of the respondent employer. This conversation occurred at approximately the time of his termination from the respondent (a date which is never specifically identified).

The claimant testified that he had previously filed a workers' compensation claim for a 2003 injury involving his thumb. He had received appropriate benefits for this injury. He also testified that he was aware that company policy required him to provide notice of his injury to "management"

within 10 days of its occurrence. He testified that he did not complete any paper work on his workers' compensation injury, prior to January 9, 2008, because the respondent did not request him to provide any written notification of his injury or provide him with any forms to complete. There is no evidence that the claimant followed any different course of action in reporting his 2007 injury that he did in his 2005 injury.

Finally, the claimant's testimony does in reporting not indicate that, at any point prior to January 9, 2008, the respondent ever specifically advised him that it was refusing to provide him with medical services or any other benefits under the Workers' Compensation Act. While the medical services by Dr. Arnold were paid under his group policy of insurance, it is not apparent whether this was the result of action by the claimant or by Dr. Arnold's office. The claimant did elect to take vacation pay for the period of time necessary to perform the arthroscopic surgery on his left knee. However, it would not be unreasonable that the claimant elected to receive full pay during this period, rather than the lesser amount of temporary total disability benefits.

After consideration of all the evidence presented, I find the claimant's testimony to be credible, in regard to both the occurrence of a specific employment related incident or accident of October 1, 2007 and the existence of a reasonably close temporal relationship between this specific employment related incident or accident and the initial onset of symptoms indicative of the occurrence of an injury in the form of large tears of two of the ligaments of his left knee. In this regard, I would note that the claimant appeared credible or truthful during his testimony at the hearing. I would further note that the claimant was a relatively long-time employee of the respondent (over 4 years)

with apparently a good work record. Finally, I would note the consistency of his testimony with the medical histories.

Thus, the claimant has proven by the greater weight of the credible evidence the occurrence of a specific employment related incident or accident on October 1, 2007. He has further proven the existence of a reasonably close temporal relationship between this specific employment related incident or accident and the initial onset of symptoms that would be compatible with or indicative of the occurrence of significant (large) tears of the medial and/or lateral menisci in left knee. When these facts are considered in light of the medical evidence presented, specifically, the deposition of Dr. Arnold, I find that the described employment related incident or accident was the most likely or probable cause of the subsequently observed severe meniscal or ligamentous injuries to his left knee.

In his deposition, Dr. Arnold stated that the description of the incident or accident, given by the claimant, would produce trauma or stress on the claimant's left knee that could reasonably produce the ligamentous or "mechanical" damage that he observed during the subsequent arthroscopy. Dr. Arnold further indicated that this represented "new" or additional damage that was separate and distinct from the claimant's pre-existing arthritic changes in the left knee.

Dr. Arnold is a highly competent orthopaedic specialist with particular expertise in the diagnosis and treatment of injuries and conditions involving the knee. He has also seen the claimant on numerous occasions, both before and after this employment related incident. His opinion in regard to these matters is entitled to substantial weight and credit. I would further note that there is no evidence in the record of any other trauma or stress that could reasonably

cause the subsequently observed ligamentous or mechanical damage to the claimant's left knee.

In summary, I find that the claimant has proven by the greater weight of the credible evidence that on October 1, 2007, he sustained a physical injury to his left knee, in the form of meniscal tears, that arose out of and occurred in the course of his employment with the respondent, was caused by a specific incident, and is identifiable by time and place of occurrence. Thus, the claimant has satisfied the first three definitional requirements for a "compensable injury" as defined by Ark. Code Ann. §11-9-102(4)(A)(i).

The claimant's testimony concerning the nature and magnitude of the symptoms he has experienced with his left knee, on and after October 1, 2007, would be strong evidence of internal physical harm to this part of his body, sufficient to reasonably require medical treatment. The effusion and other clinical findings noted by Dr. Arnold, on and after October 2, 2007, and the visual observations made by Dr. Arnold during the subsequent arthroscopic surgery would clearly be sufficient to prove the existence of internal physical harm to the claimant's left knee, as a result of his employment related accident of October 1, 2007. These objective findings would also for a sufficient basis conclude that the injury of October 1, 2007 reasonably required medical services and resulted in some disability.

The greater weight of the credible evidence proves also that the physical injury to the claimant's left knee from the employment related accident of October 1, 2007, caused internal physical harm to this part of the claimant's body, was of sufficient magnitude to require medical services, and resulted in disability. Therefore, the claimant has proven the final two definitional

requirements for a compensable injury under Ark. Code Ann. §11-9-102(4)(A)(i).

II. MEDICAL SERVICES

The next issue, is whether the medical services provided to the claimant for his left knee difficulties, by and at the direction of Dr. Christopher Arnold represents reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Again, the claimant bears the burden of proof.

In order to meet this burden, the claimant must show that the medical services he received for his left knee difficulties, by and at the direction of Dr. Arnold, were necessitated by or connected with his compensable left knee injury. He must further show that these medical services had a reasonable expectation of accomplishing the intended purpose or goal of these services, at the time these services were rendered.

On and after October 1, 2007, the claimant was experiencing two types of difficulties with his left knee. A portion of the claimant's overall difficulties with his left knee were the result of a pre-existing systemic or arthritic condition. This systemic or arthritic condition had affected the protective cartilaginous covering over the surface of the bones in the claimant's knee joint. This was described by Dr. Arnold as a chondral defect. This condition had also manifested itself in the form of arthritic bone spurring. The second of the conditions causing the claimant's difficulties was caused by the stress or trauma resulting from the employment related injury of October 1, 2007. This condition was diagnosed by Dr. Arnold as a large medial meniscal tear and a large lateral meniscal tear.

In his deposition, Dr. Arnold describes a third condition, which he indicated would likely play a role in the claimant's present and future difficulties with his left knee. In his deposition, Dr. Arnold stated that the recent or new

meniscal damage to the claimant's left knee joint, in the form of the large tears of the medial and lateral menisci would place even greater stress on the chondral covering over the bones in the claimant's left knee joint. He opined that this increased stress would, in turn, act to aggravate or accelerate the claimant's pre-existing degeneration of the chondral surfaces in his left knee.

The operative report of Dr. Arnold indicated that, during the arthroscopic surgery, he repaired both the pre-existing chondral and the "new" meniscal defects. However, the records and deposition of Dr. Arnold clearly reveal that the medical services that he provided to the claimant for his left knee, on and after October 2, 2007, were necessitated by or connected with the recent meniscal injuries that were sustained in the employment related accident of October 1, 2007. This would be especially true for the arthroscopic surgery on December 26, 2007.

The medical records, particularly the radiographic studies, show the chondral defects, on and after October 1, 2007, to be essentially similar to those present as early as 2005. These defects, in and of themselves, clearly did not merit surgical intervention in 2005, and would not, in and of themselves, have merited arthroscopic surgery in 2007. In fact, the medical records show that these pre-existing defects only periodically required minor conservative treatment, unlike the similar degenerative condition of the claimant's right knee.

The treatment provided the claimant by and at the direction of Dr. Arnold, on and after October 2, 2007, was of a type and nature commonly recognized by the general medical community as being appropriate for the diagnosis and treatment of meniscal injuries, such as those experienced by the claimant. Dr. Arnold was clearly of the opinion that the services he provided were medically

appropriate for the meniscal tears resulting from the compensable injury of October 1, 2007. Dr. Arnold is a highly competent orthopaedic surgeon with particular expertise in the area of the diagnosis and treatment of knee injuries and conditions. His opinion is entitled to substantial weight and credit.

It must also be noted that the medical services provided the claimant by Dr. Arnold actually accomplish their intended purposes. An accurate diagnosis of the nature and extent of the claimant's compensable left knee injury was accomplished. The actual physical damage caused by the compensable injury was repaired. The symptoms produced by the compensable injury were substantially reduced or alleviated.

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence establishes that the medical services provided to the claimant for his left knee difficulties by and at the direction of Dr. Arnold, on and after October 2, 2007, represents "reasonably necessary medical services", under Ark. Code Ann. §11-9-508. The mere fact that the claimant may have also received some degree of incidental benefit from the repair of his pre-existing chondral damage as a result of the arthroscopic surgery, does not prevent the surgery from being a reasonably necessary medical service for the compensable meniscal injuries. Nor does this act to relieve the respondents from liability for the expense of this procedure.

III. THE EFFECT OF ARK. CODE ANN. §11-9-701 AND ARK. CODE ANN. §11-9-514 ON THE CLAIMANT'S ENTITLEMENT TO BENEFITS

The third and fourth issues listed in the pre-hearing order (the effect of the notice provisions of Ark. Code Ann. §11-9-70,1 on the claimant's entitlement to benefits accruing prior to January 10, 2008, and whether any of the medical services received by the claimant represent "unauthorized" medical

services under Ark. Code Ann. §11-9-514), have a common evidentiary basis. Thus, even though these matters have separate legal issues, they will be discussed together.

Ark. Code Ann. §11-9-707(2) creates a prima facie presumption that sufficient notice of the injury was given. Ark. Code Ann. §11-9-701 allows the employer to adopt its own reporting procedure. However, it requires that such reporting procedure be reasonable and that the employee be given reasonable notice of the reporting procedures.

In the present case, the actual reporting procedures that were required by Bromley Parts & Service is not entirely clear. In its Employee Handbook, the respondent states that all employment related injuries must be reported "immediately" to "the management" (Respondents' Exhibit #2, page 16). However, the handbook goes on to state:

"Notices regarding procedures for filing claims for workers' compensation benefits are posted on the company bulletin board at all times. It is the responsibility of each employee to read and follow these procedures carefully. The employee is responsible for filing a form A-32 within ten (10) days of the occurrence of a job related injury. Failure to file this form in a timely manner will result in a denial of workers' compensation benefits."

However, the respondents have failed to provide a copy of the "notices" mentioned above or any detailed description of the required procedure set out in these "notices".

As previously noted, the claimant testified that he attempted to notify the owner of Bromley Parts & Service, of his accident and injury on the same date that the accident and injury occurred (i.e. October 1, 2007). It was his further testimony that he was unable to get through to the owner, but was able to contact his supervisor, Preston McKelton, on October 1, 2007. He stated that

he advised Mr. McKelton of his accident and injury and was given permission by Mr. McKelton to go to the hospital emergency room for treatment. The claimant testified that, after having difficulty seeing the emergency room doctor, he again contacted Mr. McKelton, on October 1, 2007, and was given permission to see his "regular doctor" (Dr. Arnold) the following day. Finally, the claimant testified that he also wrote on his daily time sheet, which was routinely provided to the respondent, that he went to the emergency room on October 1, 2007 and that he went to see Dr. Arnold on October 2, 2007. Finally, the claimant testified that he missed several consecutive days of work starting on October 2, 2007, as a result of his injury.

I find the claimant's testimony in regard to these facts to be credible. Not only did the claimant appear to be a credible witness during his testimony at the hearing, but his testimony would also appear to be supported by the medical evidence presented. The emergency room records and the records of Dr. Arnold unquestionably show that the claimant went to the emergency room of Washington Regional Medical Center on October 1, 2007, for difficulties with left knee pain. The records of Dr. Arnold also show that the claimant was seen on October 2, 2007, for increased difficulties with his left knee that he attributed to an employment related accident on October 1, 2007.

The respondents have presented no direct evidence that would contradict the claimant's testimony, concerning his immediate reporting of the accident and injury to his supervisor. More importantly, the respondents have presented no direct evidence to refute the statutory presumption that sufficient notice was provided to the respondent employer.

At this point, it should be noted that, in determining issues of "notice", notice to the employer is sufficient. It is the date that the employer has appropriate notice that controls, and not the carrier.

The only evidence on this issue that the respondents have tendered consists of a form A1. This form indicates that the employer was not notified until January 17, 2008 (Respondents' Exhibit #2, page 2). However, this form was clearly completed by a claims specialist for the respondent carrier. At best, this statement would be based upon hearsay or second hand information related to the claims specialist by some unknown person. Finally, the information in this form appears to deal only with an alleged injury on November 6, 2007. This error in the correct injury date occurred as the result of inaccurate information in the original AR-C that was filed on behalf of the claimant by his current attorney. Clearly, if the claims adjuster inquired of the respondents about the reporting of an injury on that date, she might reasonably be advised that no injury had been reported, even if an injury had been reported on October 1, 2007.

The greater weight of the credible evidence presented establishes that the claimant immediately reported his accident and incident to "the management" of respondent Bromley Parts & Service, Inc., as directed in the handbook that he was provided by this respondent. The respondent Bromley Parts & Services, Inc., was also made aware that the claimant had sought medical services for the knee difficulties at the emergency room of Washington Regional Medical Center and by Dr. Arnold from the notations on his time card. Finally, the respondents were also aware that the claimant did not work for several days immediately following October 1, 2007. When all of these facts are considered together, I find that the respondents had actual notice of the

claimant's accident and injury immediately after it occurred, and that this knowledge is sufficient to comply with the provisions of Ark. Code Ann. §11-9-701.

Once an employer has actual knowledge of an alleged employment related accident and injury, it would reasonably have some obligation to provide the injured worker with whatever forms that it may require. To shift the responsibility to the injured worker to track down and complete any required form, particularly when that form was kept in a central office that was over 150 miles from his residence and his assigned work station, would clearly be unreasonable.

I would also note that the respondent employer has placed in its Employee Handbook, a caveat that the claimant's failure to file a form A-32 within 10 days from the date of the occurrence of the job related injury will result in the "denial of workers' compensation benefits". This statement is not supported by any of the provisions of the Act and could easily be misleading to an injured worker with limited education or intellect. The respondents may voluntarily elect to arbitrarily deny and/or all claims, merely because the employee fails to file an A-32 within 10 days of the occurrence of the injury. However, the claimant has clearly not lost his entitlement to workers' compensation benefits, as the caveat would imply.

After consideration of all the evidence presented, it is my opinion that the respondent employer had actual knowledge of the claimant's accident and injury to his left knee immediately following its occurrence, which was sufficient to meet the requirements of Ark. Code Ann. §11-9-701. Therefore, this subsection does not bar the claimant from receiving any benefits to which he would otherwise be entitled under the Arkansas Workers' Compensation Act for

his compensable left knee injury of October 1, 2007. This includes reasonably necessary medical services, under Ark. Code Ann. §11-9-508, beginning on October 1, 2007.

For the same reasons previously stated, I find the claimant's testimony, concerning the fact that he was given permission by his supervisor at respondent Bromley Parts & Service to seek medical services from Dr. Christopher Arnold to be credible. I further find that this permission is sufficient to "authorize" medical services for the claimant's compensable injury by Dr. Arnold.

Clearly, the claimant could reasonably assume that his supervisor, as a member of "the management" to whom job related injuries were to be immediately reported had the authority to authorize medical services for such injuries. Under the provisions of Ark. Code Ann. §11-9-514, it is the respondent employer who is vested with the power to select medical providers or otherwise "authorize" medical services. Once the respondent employer has selected or even simply acquiesced in the treatment of the claimant by a particular physician, that physician becomes "authorized". There is no requirement that the physician must also have the approval of the respondent carrier. In fact, once a treating physician has been selected, neither the respondent employer nor the respondent carrier has the ability to unilaterally make that physician "unauthorized".

After consideration of all the evidence presented, it is my opinion that the greater weight of the credible evidence establishes that the medical services of Dr. Christopher Arnold does not represent "unauthorized" medical services under Ark. Code Ann. §11-9-514. Thus, the respondents are liable for the expense of the reasonably necessary medical services provided to the claimant

for his compensable left knee injury by and at the direction of Dr. Arnold, under the provisions of Ark. Code Ann. §11-9-508. However, the respondents' liability, in this regard is subject to the medical fee schedule established by this Commission.

Even had Dr. Arnold not been authorized by an agent of the respondent employer, it would have been my opinion that his medical services would not represent "unauthorized medical services", under Ark. Code Ann. §11-9-514. In the present case, the respondents have denied the occurrence of a compensable injury to the claimant's left knee and have controverted his entitlement to any and all workers' compensation benefits. Applicable case law provides that when a respondent elects this course of action and has provided no "authorized" treating physician, then the provisions of Ark. Code Ann. §11-9-514 are no longer applicable.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On October 1, 2007, the relationship of employee-employer-carrier existed between the parties.

3. On October 1, 2007, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$447.00 for total disability and \$335.00 for permanent partial disability, should such benefits be appropriate.

4. On October 1, 2007, the claimant sustained a compensable injury to his left knee, which was in the form of tears of the medial meniscus and lateral meniscus. Specifically, the claimant has proven that these particular injuries are established by the medical evidence and supported by objective findings. He has also proven that these particular injuries arose out of and in

the course of his employment with the respondent, were caused by a specific incident, are identifiable by time and place of occurrence, resulted in internal physical harm to his body, and required medical services.

5. The medical services provided to the claimant for these compensable injuries to his left knee, by and at the direction of Dr. Christopher Arnold represent "reasonably necessary medical services" under Ark. Code Ann. §11-9-508. These medical services do not represent "unauthorized" medical services, under Ark. Code Ann. §11-9-514.

6. The respondents had actual knowledge of the claimant's employment related accident and the injury to his left knee immediately after it occurred and this actual knowledge was sufficient to satisfy the notice requirements of Ark. Code Ann. §11-9-701. Therefore, the claimant is not barred from receiving any benefits to which he is entitled under the Act for his compensable left knee injury by the provisions of this subsection.

7. The respondents have denied the occurrence of any compensable injury to the claimant's left knee and have controverted this claim in its entirety.

8. As no controverted indemnity benefits or other benefits directly payable to the claimant have herein been awarded, no controverted attorney's fee can be awarded to the claimant's attorney.

ORDER

The respondents shall be liable for the reasonably necessary medical services provided to the claimant for his compensable left knee injury by and at the direction of Dr. Christopher Arnold on and after October 2, 2007. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE