

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F701000

MATTHEW VAN WIE, EMPLOYEE	CLAIMANT
BOB ROGERS CHEVROLET OLDS, EMPLOYER	RESPONDENT
TECHNOLOGY INSURANCE/ CRAWFORD & COMPANY, CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 14, 2008

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on January 17, 2008, in Fort Smith, Logan County, Arkansas.

The claimant was represented by The Honorable Laura McKinnon, Attorney at Law, Fayetteville, Arkansas.

The respondent was represented by The Honorable Les Evitts III, Attorney at Law, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on January 17, 2008, in Fort Smith, Arkansas. A Prehearing Order was entered in this case on June 29, 2007. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

The following stipulations were submitted by the parties either during the prehearing conference or at the time of the hearing, these are hereby accepted.

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

2. The employee-employer relationship existed at all relevant times between the parties.

3. The claimant is entitled to a weekly compensation rate of \$220.00 for temporary total disability and \$165.00 for permanent partial disability.

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

1. Compensability of the claimant's right knee injury.
2. Related medical.
3. Temporary total disability from February 1, 2007, to a date yet to be determined. (At the time of the hearing, the claimant withdrew his request for temporary total disability).
4. Attorney's fee.

The claimant contends that he sustained a compensable injury arising out of and in the course of his employment with the respondent on or about October 30, 2006. Claimant contends entitlement to workers' compensation benefits as set forth in the issues response in the pre-hearing memorandum, and specifically, reasonable, necessary, and related medical expenses; temporary total disability benefits; Ark. Code Ann. § 11-9-505 benefits (reserved); unpaid further medical benefits that later become controverted(reserved); permanent partial/total disability benefits (reserved) and/or rehabilitation benefits (reserved); and controverted attorney fees. All other benefits are reserved

under the Act.

Respondents contend that the claimant did not sustain a compensable injury during the course and scope of his employment with the respondents while he was performing employment-related services and, therefore, the claimant is not entitled to any benefits. Additionally, the respondents state that no compensable event is the major cause of the claimant's current disability or need for medical treatment. Additionally, the respondents state that any additional medical treatment sought by the claimant is not reasonable or necessary as a result of a compensable injury. The respondents further contend that the medical treatment sought by the claimant is not authorized, reasonable or necessary as a result of a work-related injury.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of June 29, 2007, as it has been marked as Commission's Exhibit 1. The claimant's medical evidence was marked as Claimant's Exhibit 1. The respondents' documentary records were marked as Respondents' Exhibit 1. The claimant's deposition transcript was marked as Respondents' Exhibit 2.

The following witnesses testified at the hearing: the claimant and Mr. Bob Rogers.

DISCUSSION

The claimant, age 22 (1/29/86), had worked approximately one

year for the respondent as a technician. The claimant's job duties included, but was not limited to oil changes, and basic mechanical and engine repairs. The claimant worked from eight to five, Monday through Friday. With respect to the incident of October 30, 2006. The claimant testified that he got to work right at eight o'clock and punched in by timecard. According to the claimant, he had some pre-delivery orders that he had to inspect and clean up and put some "nerf bars" on, and things of that nature. He testified that about an hour after he had been there, Mr. Rogers came back and asked them if they could go to his house and unload a piano for him. The claimant admitted that he and Nelson Inman, an oil technician, Keith, Neil and Robby went out to Mr. Rogers' house to unload the piano from the back of a pickup truck into his home.

With respect to his injury, the claimant testified:

Q. ... And we were proceeding with unloading the truck and when I stepped off the back of the tailgate to pull the piano off, and my knee just - pow, a really loud sound, and I just went to the ground. I was feeling really bad.

The claimant essentially testified that he next leaned against an adjacent vehicle in the garage and held his knee trying "not to get all sick." The claimant described the piano as being upright, with only the keyboard in front. According to the claimant, Mr. Rogers was there helping, watching and telling them what to do, as this was his personal residence.

He admitted that this was his first visit to Mr. Rogers' home. The claimant denied that he had ever done anything for Mr. Rogers after hours or on a volunteer basis.

According to the claimant, on the way back to the shop, Mr. Rogers asked if he needed to go to hospital, but he decided not to at that point and attempted to work through it. The claimant essentially testified that when he got back to the shop, he sat down and relaxed for awhile. The claimant testified that physically he is fine, except his leg hurts, as his leg is the only thing that was hurt during the incident.

The claimant admitted that a couple of days after the incident, he asked Mr. Rogers if he could go to the doctor and he had Ms. Jan (one of the secretaries) set up an appointment for him to see Dr. Buckley, and he did so. According to the claimant, he took half a day off that morning to go to doctor, and went back to work that afternoon. The claimant admitted to being sent by Dr. Buckley for x-rays and later an MRI. According to the claimant, a couple of days later, he was scheduled to be evaluated by a surgeon, but when he got there, he was advised that the doctor (Dr. Trussell) would not see him because the bills were being paid. The claimant testified that he went back to work and told Jan, and she said she would take care of it, but that is as far as he went with it. He admitted he did not have the money to pay for the visit with Dr. Trussell.

According to the claimant, he continued to work for the respondent through January. The claimant maintains that after he went to visit his parents for a week during Christmas, when he got back, Van (Mr. Rogers' son) gave him a warning for taking a week off. He maintains that he told the appropriate people before taking leave, as he calendared it about two months ahead of time.

After the warning, the claimant admitted he went back to work and worked up to the end of January, the beginning of February. The claimant admitted to being discharged on a Thursday by Van. He admitted to applying for unemployment benefits, but not too much longer after that, he got a job at Hodges in Russellville, so he did not receive any benefits. Since this time, the claimant admits that he has been working. He denied having done something at his new job or at home to make his knee worse. According to the claimant, since injuring his knee during the piano incident, it has remained the same, as it hurts everyday. The claimant testified that he has been in excruciating pain and he has no control over which way his knee is going to go, and he has to try and keep it as straight as he can. The claimant further testified, "If not, it's just going to pop out, and it really hurts, just pain from the ankle all the way up to your backbone."

As of the date of the hearing, the claimant testified he was

taking ibuprofen and aspirin about three times a day. The claimant admitted he has not had the money to see a doctor. The claimant admitted he would like to have his knee fixed.

The claimant denied having clocked out when he went to Mr. Rogers' home. The claimant denied being given the option as to whether he had to go to Mr. Rogers' home, nor was the word, "volunteer" used. The claimant admitted he was paid for a full's day pay on the day of the incident, as he clocked out at five.

On cross examination, the claimant admitted he had worked for the respondent since July of 2006, which was about three months before his October 2006 incident.

The claimant admitted he hurt his knee stepping off of the truck. He further admitted he was holding part of the weight of the piano along with Neil, when he fell down.

He also admitted that Mr. Rogers asked him during the afternoon and that morning if he needed to go to doctor. The claimant admitted to seeing Dr. Buckley on November 1st.

The claimant admitted he was not aware that Mr. Rogers paid Dr. Buckley's bill, the radiologist's bill, and the bill for the MRI, all of which were paid in November of 2006. He further admitted no one had asked him to pay those bills. However, he admitted that the real reason he did not go see Dr. Trussell was because the workers' comp insurance people told him that they were denying his claim. The claimant further admitted to having

worked for the respondent from the time of the incident, October 30th, through February 1st, at which point he was fired.

The claimant admitted he testified during his deposition he did not know why he was fired because he was not really clear on why they fired him. He denied having received from the respondent, copies of complaints from customers about the work they had to redo. He further denied having gotten notice that he was being discharged for taking off work and not clocking in, because had written in his time on a timecard instead of clocking in because he was not there.

The claimant essentially admitted that he testified during his deposition that he had not pursued unemployment benefits because his wife was making good money, therefore he was going to work on his own as a mechanic for friends and relatives. He also admitted to having testified that the reason he went back to try and get a job at Hodges Heavy Duty was because he not making enough money on his own. The claimant admitted to having gone to work for Hodges Heavy Duty on March 30, 2007, as he was off work a couple of months rather than a couple of weeks.

On redirect examination, the claimant essentially admitted he did not think he had a choice about assisting with the piano.

Mr. Bob Rogers, the owner and operator of Bob Rogers Chevrolet Olds, also testified during the hearing. Mr. Rogers testified he has owned the company forty(40)years and some few

days. Mr. Rogers admitted to having stated he needed three big strong boys to go with him to his house to unload a little piano. He denied having told any of the men they had to go; instead, he maintains it was a volunteer deal. Mr. Rogers denied that this was in any way related to their employment. However, he admitted he did not make them clock out, as they received their regular pay. Mr. Rogers admitted he heard the claimant say, "Oh, my knee hurt...." According to Mr. Rogers, the claimant went over and held onto the back of his wife's car, and stated, "Boy, that hurt." He admitted to having offered to take the claimant to the doctor, but he told him he would be all right. Mr. Rogers testified that the claimant told him he got hurt a long time ago, and that it was an old football injury. He admitted that there was no denying that the claimant hurt his knee, but he told him it was an old football injury.

Mr. Rogers admitted he asked the claimant during the evening break how he was doing, and he stated "Not too good." According to Mr. Rogers, he also asked if the claimant wanted him to run him to doctor and he said, "No, I'll be all right." According to Mr. Rogers, Jan denied having made the appointment for the claimant to see Dr. Buckley. He testified the claimant went to see Dr. Buckley because he said that he was his doctor. According to Mr. Rogers, he would not have sent the claimant to see Dr. Buckley, instead, he would have sent him to his brother's

grandson who is a doctor. According to Mr. Rogers, the two are in the same clinic. However, he admitted to paying for the claimant's November 1st visit with Dr. Buckley, which was \$75.00, and \$28.00 for the radiologist to read the x-rays. He also admitted to paying \$972.00 for the MRI, as all of these were paid in November of 2006.

Mr. Rogers vehemently denied that the claimant was discharged due to the filing of his workers' compensation claim. Mr. Rogers gave an extensive explanation as to why the claimant was discharged, as all of these reasons related to poor work performance, and his failure to clock in and clock out on a particular day.

On cross examination, Mr. Rogers admitted he could agree that the claimant got hurt while lifting a piano. He further agreed the claimant was did not clock out when he went to his house to help with the piano. He admitted he never told the claimant it was a volunteer deal (for him to help with moving the piano).

A review of the medical evidence shows that the claimant saw Dr. Douglas Buckley on November 1, 2006, due to complaints of right knee pain and other related symptoms. Dr. Buckley reported:

SUBJECTIVE: Matt Van Wie on October 30 stepped off a truck while holding a heavy part. He felt his right knee pop as it went sideways. That night, it swelled quite a bit. It has been painful ever since the

accident. He has had no previous knee problems other than a minor injury ten years ago with no interval trouble whatsoever. The knee feels unstable. It feels like it is going to give away. He cannot flex it more than about 60 degrees. It remains swollen and painful.

ASSESSMENT:

1. Internal derangement of right knee, probably meniscal tear.

PLAN:

1. Will obtain plain films today and MRI next week.
2. Appointment with Orthopaedics to follow:
3. Relafen 500 b.i.d. in the interim.
4. He is to avoid re-injuring it by running, jumping, or squatting, but he may do static quad exercises.
5. Recheck as needed.

The claimant also underwent x-rays that same day, with the following impression, "No acute pathology presently detected."

On November 6, 2006, the claimant underwent an MRI of the right knee, with the following impression:

1. Complete ACL tear with knee joint effusion.
2. Posteromedial popliteal/Baker's cyst containing some debris and measuring about 5 x 2 cm.
3. Slight free edge fraying of the body, posterior horn medial meniscus. No meniscal tear.

On March 5, 2007, Dr. Buckley wrote:

This letter is to confirm that the above Matthew Van Wie underwent MRI imaging of his right knee on November 6, 2006. This test was ordered because of the findings of pain, swelling, decreased range of motion and instability on his clinical examination on November 01, 2006. The findings on the MRI included complete ACL tear as well as some damage to the medial meniscus and he was referred to orthopedics for further evaluation and treatment. Further details are available by contacting my office.

Dr. Buckley reported the following conclusion on September 20, 2007:

Based upon some objective medical findings and within a reasonable degree of medical certainty, it is my opinion that Matthew Van Wie sustained a work-related injury on or about the above date, which was the major cause of the patient's need for medical treatment and any resulting disability.

In a second letter on that same date, Dr. Buckley wrote the following:

This letter confirms that my medical records, chart, and narratives regarding the above patient are supported by objective findings and are stated within a reasonable degree of medical certainty.

ADJUDICATION

The crucial issue for determination in this matter is whether the claimant was acting within the course and scope of his employment at the time of his right knee injury on October 30, 2006.

Ark. Code Ann. § 11-9-102(4) provides:

(A) "Compensable injury" means:

(i) An accidental injury causing internal or external physical harm to the body. . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

(B) "Compensable injury" does not include:

(iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated[.]

The test for determining whether an employee was acting within the "course of employment" at the time of the injury requires that the injury occur within the time and space boundaries of the employment, when the employee is carrying out the employer's purpose or advancing the employer's interests directly or indirectly. Pilgrims Pride Corp. v Calderera, 54 Ark. App. 92, 923 S.W.2d 290 (1996).

In the present matter, although the claimant was not performing his customary duties as a technician, the evidence demonstrates that he was in fact acting within the course of his employment and providing employment services at the time of his right knee injury on October 30, 2006.

The claimant credibly testified that on the morning of the incident, Mr. Rogers (the owner of Bob Rogers Chevrolet Olds/respondent-employer) came back and asked if he and some other coworkers could go with him to his house, to help unload a piano from the back of a pickup truck and place it inside of his home. The claimant's testimony demonstrates that Mr. Rogers gave instructions and assisted with the moving of the piano. The claimant testified he did not clock out to go to Mr. Rogers' home to assist in moving the piano, and he admitted to having received a full's day pay on the day of the incident, as the accident occurred during his regular working hours. The testimony elicited from Mr. Rogers during the hearing corroborates the claimant's testimony in this regard. The purpose of the

claimant going to Mr. Rogers' home was to assist in unloading a piano from a pickup truck, and placing it inside his home. So long as the claimant was advancing the purpose of moving the piano to the appropriate area inside of Mr. Rogers' home, he was furthering the interest of his employer. Here, the record is replete with testimony from the claimant and Mr. Rogers that the claimant's knee injury occurred as he assisted with unloading the piano from the tailgate of the pickup truck. The claimant's activities at the time of his injury were clearly consistent with advancing his employers' interest of unloading the piano from the truck so that it could be placed inside of Mr. Rogers' home. Under these circumstances, I find that at the time of the claimant's knee injury, he was engaged in conduct that was directed and controlled by his employer for the sole purpose of ultimately transferring the piano to the inside of Mr. Rogers' home. As such, the claimant has met his burden of proving by a preponderance of the credible evidence that he was performing "employment services" when his right knee injury occurred. See Engle v. Thompson, 96 Ark. App. 200, ____ S.W. 3d ____ (2006).

While I realized that Mr. Rogers has made prompt payment for all of the claimant's medical treatment of record, I find that the claimant proved that all of the medical treatment of record was reasonably necessary in connection with his compensable injury, pursuant to Ark. Code Ann. § 11-9-508(a). The claimant has also established by a preponderance of the evidence that the orthopaedic referral for evaluation and treatment as recommended

by Dr. Buckley is reasonably and necessary treatment for his knee injury. I am persuaded by Dr. Buckley's March 5, 2007, opinion that an orthopaedic referral is appropriate considering the findings on the MRI, which included a complete ACL tear as well as some damage to the medial meniscus. I am further persuaded by Dr. Buckley's November 1st reporting of pain, swelling, decreased range of motion and instability on the claimant's clinical examination. The claimant also credibly testified that as of the date of the hearing, he continues with severe knee pain and related symptoms due to his compensable injury.

Because the claimant's injury occurred after July 1, 2001, I find that I am without statutory authority under Ark. Code Ann. § 11-9-715 to award the claimant's attorney an attorney's fee on the medical benefits specifically awarded herein.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times.
3. The claimant was earning sufficient wages to entitle him to a weekly temporary total disability compensation rate of \$220.00 and \$165.00 for permanent partial disability.
4. The claimant proved by a preponderance of the credible evidence that he was acting within the course and scope of his employment at the time of his right knee injury on October 30, 2006.
5. The claimant proved by a preponderance of the evidence that the medical treatment of record was reasonably necessary in connection with his compensable right knee injury. He also established by a preponderance of

the evidence that the orthopedic referral for further evaluation and treatment is reasonably necessary medical treatment for that injury.

AWARD

The respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth in this Opinion.

All other benefits are reserved under the Act.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml