

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F608015

AMANDA VOLKMANN, Employee	CLAIMANT
SONIC DRIVE IN, Employer	RESPONDENT
FARMERS INSURANCE EXCHANGE, Carrier	RESPONDENT

OPINION FILED MARCH 27, 2008

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

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JASON LEE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 28, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on December 19, 2007, and a pre-hearing order was filed on that same date. 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 respondents have controverted this claim in its entirety.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$157.50 which would entitle her to compensation at the rate of \$105.00 for total disability benefits.

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

1. Compensability of injury to claimant's right knee and hip on July 5, 2006.

2. Temporary total disability benefits from July 6, 2006 through November 1, 2006.
3. Medical.
4. Attorney fee.

The claimant contends she sustained a compensable injury to her right knee and right hip when she was hit by a vehicle while she was performing her job duties on July 5, 2006. She contends she is entitled to temporary total disability benefits, reasonable and necessary medical treatment, and a controverted attorney fee.

The respondents contend the claimant did not suffer a compensable injury to her right knee and hip. Furthermore, medical records do not support that the claimant has suffered a compensable injury. The respondents disagree that claimant is entitled to indemnity or medical benefits, nor is her attorney entitled to an attorney's fee.

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 her 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 December 19, 2007, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$157.50 which would entitle her to compensation at the rate of \$105.00 for total disability benefits is also hereby accepted as fact.

3. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right knee and hip while employed by respondent on July 5, 2006.

4. Respondents are liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.
5. Claimant is entitled to temporary total disability benefits beginning July 6, 2006 and continuing through November 1, 2006.
6. Respondents have controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant worked as a carhop for the respondent. Claimant testified that on July 5, 2006 there was a long wait at the respondent's drive-through window so she was taking an order to a vehicle behind the vehicle at the drive-through window. As she crossed in front of the vehicle at the drive-through window, an SUV, it moved forward and struck her in the right hip and knee, causing her knee "to go kind of to the left."

Claimant testified that the vehicle which struck her left and she delivered the order. Claimant then went into the restaurant and was given ice by her supervisor. Claimant testified that she indicated that she might need to go to the doctor, but instead simply went home approximately 30 minutes before the end of her shift.

Claimant testified that after she went home her condition worsened and she asked her son to take her to the emergency room in Siloam Springs. After waiting for a period of time, claimant was informed that there was still a four hour wait and because she did not have lights on her car and it was getting dark she decided to leave and come back the next day.

Claimant returned to the emergency room on July 6, 2006 with complaints of right hip and right knee pain after having been struck by a vehicle at work the day before. Claimant was given an injection, medication, a knee immobilizer, and crutches. Claimant was diagnosed with a contusion of the hip and knee and was instructed to receive follow-

up treatment with repeat x-rays. Claimant was also taken off work until her next appointment.

Claimant was next evaluated by Dr. Duncan on July 14, 2006, at which time he again diagnosed claimant's condition as a contusion of the hip and knee. Dr. Duncan referred claimant to an orthopaedist for further evaluation. He also continued claimant's prescription medication.

Claimant has not received medical treatment since that date due to the fact that the respondent denied compensability and she cannot afford medical treatment on her own. Claimant has filed this claim contending that she suffered a compensable injury and seeking appropriate compensation benefits.

ADJUDICATION

_____ Claimant contends that she suffered a compensable injury while working for the respondent on July 5, 2006 when she was struck by a vehicle in the respondent's drive through. Claimant's claim is for an injury caused by a specific incident and identifiable by time and place of occurrence. The Commission has stated in *Henry Weaver v. Precision Packaging*, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993, the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identi-

fiable by time and place of occurrence.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury.

After having had the opportunity to observe the claimant and hear her testimony, I find that the claimant is a credible witness and that her testimony is entitled to great weight. Claimant testified that on July 5, 2006, while working for the respondent as a carhop she was in the process of taking an order to a vehicle in the drive through when she was struck in the right hip and knee by the vehicle which was sitting at the window. Claimant testified that she had some pain after being struck and that her condition worsened. Claimant was given ice by her supervisor and went home before the end of her shift. After claimant's condition worsened she sought medical treatment from the emergency room in Siloam Springs. Medical records introduced at the hearing confirm claimant's testimony that she did in fact appear at the emergency room on July 5, 2006 with complaints of right knee and hip pain after having been struck by a vehicle at work. The emergency room records also indicate that at 8:23 the claimant left the emergency room.

Medical records from July 6, 2006 indicate that claimant returned to the emergency room with the same complaints of right hip and right knee pain. Claimant was given an injection, medication, a knee immobilizer, and crutches. She was also taken off work and instructed to receive follow-up treatment. X-rays taken at that time revealed a "large joint effusion" in the claimant's right knee. Claimant received one follow-up evaluation from Dr. Duncan at which time he referred claimant to an orthopaedist for further evaluation.

After my consideration of the claimant's testimony which I find to be credible as well as a review of the medical records, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury which arose out of and in the course of her employment and that was caused by a specific incident

identifiable by time and place of occurrence. I also find that claimant has met her burden of proving by a preponderance of the evidence that the injury caused internal physical harm to the body which required medical services and that she has offered medical evidence supported by objective findings establishing an injury. Here, claimant was diagnosed as suffering from a contusion of the right knee and right hip. In addition, an x-ray report of the claimant's right knee revealed a "large joint effusion." This would qualify as an objective finding establishing an injury.

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right knee and hip while employed by respondent on July 5, 2006.

Having found that claimant suffered a compensable injury, I find that respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

I also find that claimant is entitled to temporary total disability benefits beginning July 6, 2006, and continuing through November 1, 2006. The injury to claimant's right 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).

In this particular case, claimant did not return to work for the respondent after her injury and she did not return to work for any employer until November 1, 2006. During this period of time the claimant remained within her healing period for her compensable injury. In fact, claimant has still not received medical treatment recommended by Dr. Duncan due to a lack of funds and a denial of this claim by the respondent. Accordingly, I find that claimant remained within her healing period. In addition, the claimant did not return to

work until November 1, 2006. Accordingly, claimant is entitled to temporary total disability benefits beginning July 6, 2006 and continuing through November 1, 2006, the date she returned to work for other employers.

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 her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her right hip and knee while employed by respondent on July 5, 2006. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury. Claimant is entitled to temporary total disability benefits beginning July 6, 2006 and continuing through November 1, 2006. 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 \$263.00.

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.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE