

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F505333 (04/05/05)**

<b>JOSEPH H. WALKER, II, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>H &amp; M INTERNATIONAL TRANSPORTATION, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>ZURICH AMERICAN INSURANCE CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED SEPTEMBER 22, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 26, 2008, at Marion, Crittenden County, Arkansas.

Claimant appeared pro se.

Respondents represented by the HONORABLE MICHAEL N. HARRY, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above style claim to determine the claimant's entitlement to additional workers' compensation benefits. On June 3, 2008, a pre-hearing conference was conducted in the claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Joseph H. Walker, II, - the claimant, coupled with medical reports and other documents comprise the record in this claim.

**DISCUSSION**

Joseph H. Walker, II, with a date of birth of October 14, 1951, is a high school graduate with a bachelors degree from Memphis State University [University of Memphis]. Claimant commenced his employment with respondent-employer on January 20, 2000. Regarding his job duties in the employment of same, claimant testified:

No. No. We drove the trucks on the lot. Never went off the lot. For instance, we parked containers next to the train to be loaded onto the train, off the chasses. (T. 11).

Respondents acknowledged that the claimant sustained injuries to his left knee and left shoulder on April 5, 2002, within the course and scope of his employment. In describing the mechanics of the April 5, 2005, accident claimant's testimony reflects:

I slipped on a big long stretch of oil that had been dropped by a machine and slipped, my knee went out from under me and I tried to catch myself and that's how I hurt this shoulder. (T. 11).

Claimant responded "nothing really at all" to the question regarding any prior problems with either his left shoulder or left knee before the April 2, 5005, accident. The claimant received medical treatment in connection with both the left shoulder and left knee injuries. The testimony of the claimant reflects that the left shoulder surgery was successful. The claimant has also undergone surgery on his right shoulder for what he acknowledged was a pre-existing condition [rotator cuff problem].

Claimant asserts that medical bills incurred in connection with April 5, 2005, accident remain unpaid. Claimant testified that he checked with the local ambulance service in Pine Bluff and the fire department in Marion. Claimant asserts that when he received the bill from the provider he gave it to the safety manager at respondent-employer. In addition to the afore bills, claimant testified that the doctor's bill for Tyler Medical, Emergency & Physicians Group has not

bee paid.

The testimony of the claimant reflects that following his surgeries relative to the injuries growing out of the April 5, 2005, accident, he returned to the employment of respondent and worked for six to seven months. Regarding the termination of his employment with respondent-employer, the claimant testified:

No. I was asked to sign a form that my lawyer advised me would open me for identity fraud. That he wouldn't sign it. And if I refused to sign it they would terminate my employment. And I told them that I just can't sign this. I offered to give them all three of the TransUnion and all of those credit reports, they could look at it. They were worried about security things, but I wasn't going to sign over that they could do that at any time in the future and anyone there they gave permission to could. And my children, it was on the form, my children had no recourse. I was like, woah, this is severe. (T. 14).

The testimony of the claimant reflects that as a result of his refusal to sign the document his employment was terminated on November 10, 2006.

The claimant was able to performed his assigned job duties for respondent-employer at the time his employment was terminated. Claimant testified that during the period following his return to the employment of respondent after his injury he was not required to climb on the trains and unlock them.

Following the termination of his employment by respondent-employer the claimant took a course in insurance and pursued starting an insurance business. Claimant concedes that to date he has not been successful and offered that he may have to back to another form of employment.

Claimant testified regarding his residual problems with his left knee that he attribute to the April 5, 2005, work-related accident:

Oh, ever since day one, the same sharp ice pick feeling right in

the middle, and then in the front, when I swing my leg forward, there is an ache and a pain in the front of my knee, and I talked about that with all of the doctors, Dr. Manugian never would seem to appreciate the fact that I had the pain in the front and he kept telling me no, its over here. I always thought he would make a better veterinarian because he didn't listen to his patients. (T. 15).

Claimant's testimony reflects that he is uncertain if he relayed his continuing difficulties with the left knee to the claim adjuster noting that they had quit talking to one another the inability to respond. The testimony of the claimant reflects regarding the last time he had contact with Dr. Manugian:

Yes. He was out of town to enter his son in Harvard and Dr. Knight did the last check and I was glad to have an opportunity to have a doctor that listened to me. So I decided to go on with him on the shoulder, Dr. Knight instead of Magugian. (T. 15-16).

The last doctor the claimant saw regarding his knee, which was in April 2008, was Dr. Knight. Prior to the April 2008, visit to Dr. Knight the claimant had last been seen regarding his left knee compensable injury in January 2006 by Dr. Manugian. Claimant denied sustaining any other injury to the left knee between January 2006 and April 2008:

No. This hasn't been any different than it was in September when they started my shoulder, I was complaining to Dr. Knight that I still had that sharp, ice pick feeling in the middle and the ache in the front, you move it wrong and it feels like you drove an ice pick in me. Such as, if I'm laying in bed and roll over and don't roll just right, it will hit me. Going upstairs is really tough. (T. 16).

Claimant asserts that he needs further medical treatment relative to his left knee injury. Claimant noted that as a result of his April 2008 visit to Dr. Knight he was scheduled for surgery regarding the left knee on May 21, 2008, however was unable to obtain approval of same from respondents. Claimant's testimony further reflects:

Yes sir. And they have tried to reschedule it since but they weren't getting any response from Sherry Baker, who is the representative for the insurance company. (T. 17).

The claimant added, regarding the medical records:

On the booklet he has there, on the 21<sup>st</sup> of April, 2005, Dr. Manugian called it preexisting and then on the 23<sup>rd</sup>, he's calling it no better than it was before, and those are all before the MRI. After the MRI he talks about a large tear. So, I just thought it was confusing that they were going to say preexisting when no one had even looked in there at that time to make that decision. (T. 17).

During cross-examination the claimant testified that when he returned to Dr. Knight in March 2008, he provided an complete and honest history of his symptoms and complaints. At the time of his initial contact with Dr. Knight in August 2005, the claimant was at the office for the final visit with Dr. Manugan regarding his left knee injury.

The claimant was last treated for his left knee in January 2006, at which time he was provided an impairment rating and released. With respect to any medical treatment regarding the left knee complaint between January 2006 and March 2008, claimant testified:

Oh, if you check with my family physician, I complained to him each time I was in, which I go about every six months to renew prescriptions, so he would have a record of that, that I had complained to him about that. In fact, the last time I spoke with him was since this, this first meeting, and he is saying that possibly there was more to it than that that they shouldn't limit it to just what the . . . . (T. 19).

Regarding subsequent events involving his left knee between January 2006 and March 2008, claimant testified:

The only thing I can say to that is it has fallen out from under me but I did not reinjure it. Skinned my hands when I landed on the concrete, but, no I didn't reinjure it. (T. 21).

In describing the left knee giving way claimant noted that it has occurred on several occasions where he experienced “a sharp pain in it and then it wouldn’t catch and I would just go down”. (T. 22). Regarding the number of times he has experienced the left knee giving way, the claimant testified:

Three or four. I’m thinking of two specifically. One of them Was when I was wearing a suit and I just fell down and rolled in the dirt and got dirty, and that got my attention. But its just that, the ice Pick jam in my leg, I had moved it wrong, has caused that. (T. 22).

Claimant noted that there were no warning signs or indications that the knee was about to give way:

No. Its strange about how that, its just a sharp pain and just like, it while I’m walking, not when I’m standing still. (T. 22).

The record reflects the presence of three (3) unpaid bills which the claimant attribute to the April 5, 2005, compensable accident. One bill, dated July 29, 2005, is from the Tyler Emergency Physician in the amount of \$274.00. The afore bill is from a collection agency and reflects that the “balance is a sum of balances from (2) accounts. The account number reflected on the afore is 6750417 0125411650 0197970. The Crittenden Memorial Hospital of July 12, 2005, reflects a balance of \$655.10, with the Master Account number of 12541165. The final bill is in the amount of \$350.04, from Rural/Metro Mid-South, LP, and is dated March 16, 2006.

On May 31, 2005, the claimant underwent left knee arthroscopy under the care of Dr. A.H. Manugian. The clinic note relative to the afore surgery reflects, in pertinent part:

Under general anesthesia the left knee was examined. He had full range of motion and moderated effusion. Arthroscopically normal lateral compartment. Significant anteromedial synovitis with a complex macerated medial meniscus that was resected. Grade IV articular surface changes were noted of the medial femoral condyle and tibia both of which

underwent debridement and chondroplasty.

ACL and PCL were normal (in spite of a MRI finding of a PCL).

The patellofemoral joint had Grade II-III malacic changes and underwent a chondroplasty. The patient did well and discharged home with instructions. Follow up visit as directed. (RX. #1, p. 22).

On August 24, 2005, the claimant underwent surgery relative to his left shoulder under the care of Dr. W. Harold Knight. The left shoulder procedure consisted of arthroscopic subacromial decompression and arthroscopic distal clavicle resection, mini open repair of supraspinatus and infraspinatus. (RX. #1, p. 36).

On November 28, 2005, the claimant was seen by Dr. A. H. Manugian regarding the compensable left knee injury and subsequent surgery. The clinic note regarding the visit reflects, in pertinent part:

The knee is doing considerably better. The long term implications of the degenerative changes discussed as well as the possibility of Supartz injections in the future. He is provided with appropriate literature and will contact the office on an as needed basis. He is released back to work. (RX. #1, p. 79).

The claimant was again seen by Dr. Manugian on January 12, 2006, regarding the compensable left knee injury. The clinic note regarding the afore reflects, in pertinent part:

Mr. Walker returns today. He is now approximately seven months post his left knee partial meniscectomy and chondroplasty. He has some weather related aching. Full range of motion today, no effusion. No patellofemoral crepitus. No collateral or cruciate laxity. Standing AP and lateral x-rays of his left knee reveal the medial and lateral as well as patellofemoral changes noted at the time of surgery. A permanent impairment rating according to the Fifth Edition of the AMA Guidelines page 546 table 1733 of 2% to the left lower extremity which is 1% to the body as a whole (the degenerative changes are pre-existing the injury). I will see him again on an as needed basis. He may return back to normal activities with no restrictions. (RX. #1, p. 156).

The medical in the record reflects that the claimant was seen on March 21, 2008, by Dr. Knight regarding his left knee. The clinic note regarding the visit reflects that the claimant attributed the need for treatment to the April 5, 2005, injury. The March 21, 2008, report reflects, in pertinent part:

**HISTORY OF PRESENT ILLNESS:** Joseph Walker complains of chronic left knee pain. He had knee arthroscopy in 2006 by Dr. Manugian. He has had persistent pain in his left knee since that time. He received an impairment rating. He has taken Mobic without significant benefit. No history of any recent injury.

\* \* \*

**X-RAYS:** AP/lateral, tunnel and skyline views of the left knee, moderate DJD left knee.

**IMPRESSION/PLAN:** DJD left knee.

**PLAN:** I've injected the patient's knee today with lidocaine and celestone. He has a knee brace, so he will use that. Recheck in two weeks and if he's not better, we may consider an MRI. (RX. #1, p. 186-188).

A April 22, 2008, clinic note of Dr. Knight regarding the claimant reflects that the left knee was no better following injection and that the claimant was still tender at the medial joint line area with popping present. (RX. #1, p. 189).

The medical reflects that the claimant underwent an MRI of the left knee on April 28, 2008, pursuant to the directions of Dr. Knight. The Final Report of April 28, 2008, regarding the MRI reflects:

**OPINION:**

1. Osteoarthritis of the knee with the greatest changes at the medial compartment with medial joint space narrowing and severe chondromalacia. Medial and lateral joint line spurring.
2. Degenerative changes of the medial meniscus with oblique tear involving the posterior horn and decreased volume of the body and posterior horn

with medial extrusion. (RX. #1, p. 190).

The claimant was seen by Dr. Knight on May 2, 2008, following the MRI of the left knee. The May 2, 2008, clinic note reflects, in pertinent part:

His MRI demonstrates a medial meniscus tear and some arthritic change in the medial compartment. Absent ACL. I informed him of the results. I recommended arthroscopy and would not recommend ACL reconstruction at his age. He may have articular damage that would require pick arthroplasty and he is informed of the possibility of that and the necessary postop regimen. He understands and wishes to proceed with surgery. (RX. #1, p. 192).

The claimant asserts entitlement to the payment of the unpaid medical bills and the surgical procedure as recommended by Dr. Knight in the treatment of his left knee injury. After a thorough consideration of all of the evidence in this record, to include the testimony of the witness, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and applicable case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 5, 2005, the relationship of employee-employer-carrier existed among the parties when the claimant sustained compensable injuries to his left shoulder and left knee.
3. On April 5, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$307.00/\$231.00, for temporary total/permanent partial disability.
4. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of April 5, 2005, in accordance with Commission Rule 099.30.
5. The respondent shall pay for the claimant's surgical procedure relative to his left knee pursuant to the recommendation of Dr. W. Harold Knight. The evidence preponderates that

the same arose out of the April 5, 2005, compensable accident.

6. The respondents have controverted the incurred unpaid medical bills growing out of the claimant's April 5, 2005, compensable injury as well as a the claimant's entitlement to further medical treatment subsequent to March 21, 2008, relative to the compensable April 5, 2005, left knee injury.

### **CONCLUSIONS**

The compensability of the claimant's April 5, 2005, accidental injury to his left shoulder and left knee is not disputed. Respondents accepted the afore as compensable and paid corresponding temporary total and permanent partial disability benefits to the claimant. Respondents also paid medical benefits on behalf of the claimant in connection to medical treatment for the left shoulder and left knee injuries. Claimant asserts entitlement to additional workers' compensation benefits in connection with the April 5, 2005, injury to his left knee as well as incurred unpaid medical bills. Respondents take the position that all appropriate workers' compensation benefits have been paid.

The present claim is one governed by the provisions of Act 796 of 1993 in that the claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

As noted above, the compensability of the claimant's April 5, 2005, accidental injury to his left knee and left shoulder is not disputed. Nor is there a dispute regarding the mechanism of the April 5, 2005, accidental injury. There is no evidence in the record to reflect that the claimant sought or required medical treatment relative to his left shoulder or left knee prior to the April 5, 2005, compensable accident. Further, the record reflects that the claimant successfully

discharged his job duties in the employment of respondent through the time of his April 5, 2005, accident without limitations or physical restrictions relative to his left knee or shoulder.

The evidence in the record reflects that the claimant was transported by ambulance to the emergency room of Crittenden Memorial Hospital following his April 5, 2005, work-related accident. A review of the medical records in conjunction with the emergency room visit clearly establish the mode of the claimant's transportation to the emergency room, the location of the treatment facility, and the nature of the claimant's injuries growing out of the work-related accident. (RX. #1, p. 1-8).

The evidence in the record reflects the presence of incurred unpaid medical bills in connection with medical treatment received by the claimant relative to the April 5, 2005, compensable injury. Inclusive in the afore are bills associated with the emergency medical providers relative to the injuries received by the claimant on April 5, 2005.

The emergency admission form of Crittenden Memorial Hospital relative to the claimant's April 2005, compensable injury reflect the guarantor as the claimant. The document also identified the claimant's employer as Union Pacific R/R. The unpaid incurred medical bills in the record were all directed to the claimant. In February 2008, the claimant forward copies of the unpaid bill to the attorney for respondent. While the evidence in the record preponderates that the incurred unpaid medical bills were in connection with the treatment for the claimant's compensable injury, [which included ambulance services, the emergency room physician, and the emergency room], there is no showing that the medical provider submitted the bills to respondents in light of the fact that the claimant was identified as the guarantor.

Ark. Code Ann. §11-9-802 (e) provides, in pertinent part:

In the event that the commission finds the failure to pay any benefit is willful and intentional, the penalty shall be up to thirty-six percent (36%), payable to the claimant.

While the evidence preponderates that respondents are liable for the incurred unpaid medical bills in connection with the treatment of the claimant's April 2005, compensable injury, the claimant has failed to prove by a preponderance of the evidence that the failure to pay the bills was wilful and intentional such as to incur the 36% penalty.

As noted above, there is no evidence in the record to reflect that the claimant sought or required medical treatment relative to his left knee prior to the April 5, 2005, compensable injury. The credible evidence does reflect that since sustaining the April 5, 2005, compensable left knee injury the claimant has experienced symptoms in the left knee. It is undisputed that the diagnostic studies, x-ray, disclosed the presence of degenerative conditions in the claimant's left knee. Since the claimant has not sought or obtained medical treatment relative to same prior to the April 5, 2005, work-related accident, the evidence preponderates that the same was, at best, asymptomatic.

The claimant has undergone arthroscopic surgery relative to the left knee since the April 5, 2005, work-related accident. While the claimant's left knee injury was rate by his treating physician, the credible evidence in the record reflects that the claimant continued to experience symptoms and complaints relative to the left knee. In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for

which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

In the instant claim, Dr. Knight who saw the claimant on March 21, 2008, regarding the claimant's left knee complaints, after examining same and reviewing diagnostic studies, has recommended further medical treatment. The evidence preponderates that the claimant's current left knee complaints are the product of the April 5, 2005, compensable injury in the employment of respondents. Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with an employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). The claimant has sustained his burden of proof by a preponderance of the credible evidence that the surgical procedure as recommended by Dr. Knight is reasonably necessary in connection with the treatment of the April 5, 2005, compensable left knee injury. Respondents have controverted the claimant's entitlement to medical treatment relative to the left knee subsequent to March 21, 2008.

#### **AWARD**

Respondents are herein ordered and directed to pay all reasonably necessary medical treatment in connection with the claimant's compensable left knee injury of April 5, 2005, to include the treatment as recommended by Dr. W. Harold Knight subsequent to March 21, 2008.

Respondents are further ordered and directed to pay all reasonably necessary medical expenses in connection with the treatment of the claimant's compensable injuries of April 5, 2005, to include the incurred unpaid medical bills associated with the claimant's emergency medical treatment at Crittenden Memorial Hospital and the cost of the ambulance fees.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809,

until paid.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**