

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209686

EDWIN DEFFENBAUGH,  
EMPLOYEE

CLAIMANT

TEC THE EMPLOYMENT CO., INC.,  
EMPLOYER

RESPONDENT

LIBERTY MUTUAL INS. CO.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 14, 2004

Upon review before the FULL COMMISSION in Little Rock,  
Pulaski County, Arkansas.

Claimant appeared PRO SE.

Respondents represented by HONORABLE JAMES ARNOLD II,  
Attorney at Law, Fort Smith, Arkansas.

Decision of the Administrative Law Judge: Affirmed and  
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the  
Administrative Law Judge filed November 20, 2003. The  
Administrative Law Judge entered the following findings of  
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission  
has jurisdiction of this claim.
2. On June 19, 2002, the relationship of  
employee-employer-carrier exited between the  
parties.

3. Compensation rate of \$251.00 temporary total disability and \$188.00 permanent partial disability.
4. The claimant has failed to prove by a preponderance of the evidence that he sustained a work related injury while working for the respondent in June 2002.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

\_\_\_\_\_ I dissent from the majority opinion denying compensation for injury to Claimant's right knee. After conducting a de novo of the entire record, I find that the Full Commission should reverse the Administrative Law Judge's opinion and award benefits to Claimant.

Claimant worked as a mechanic at Liftruck Parts & Service, Inc. as an employee of Respondent TEC, a temporary employment agency. Claimant testified that he injured his right knee on or about Wednesday, June 19, 2002, when he was kneeling in a catcher's position over a tire and wheel assembly of a Yale forklift at Liftruck. He stated that he felt real sharp pain in his knee that turned into a burning sensation. The knee became swollen over a 24 hour period. Claimant testified that he iced the knee at home and the parties stipulated that Claimant's mother, whom he lived with, would testify accordingly.

Claimant testified that he reported this injury to Steve Johnson at Liftruck on Thursday because his supervisor, Rick Johnson, was not there. Claimant showed Steve his swollen knee, told Steve that the injury happened at work, and asked Steve whether Claimant had insurance coverage. Claimant stated that Steve told him that he would

discuss it with his family members, who were co-owners of Trucklift, and get back to Claimant with an answer.

Claimant testified that he discussed his knee injury with Rick the next day, Friday, and again on Monday. Rick agreed to give Claimant the following week off so that Claimant could rest his knee.

Claimant testified that he did not seek medical treatment during that week off of work because he was trying to get Liberty Mutual, TEC's carrier, to pay for medical care. He testified that the carrier would not let him get medical care but instead took his deposition. He also stated that some time after the knee injury that he experienced a fire, the nature of which is unclear from the record, and could not afford to seek medical treatment for his knee due to expenses related to recovering from the fire damage.

Claimant testified that he was hired as a mechanic at Liftruck on May 13, 2002, and approximately three days later was informed of Liftruck's relationship with TEC. Claimant signed an employment agreement with TEC on May 18, 2002. He testified that he never met with TEC representatives or went through TEC orientation, but was just sent papers to sign. Claimant further testified that he

informed TEC of the injury within a month of its occurrence. Claimant also testified that he did not know that TEC had a 24 hour reporting policy for work injuries because he was busy at work at the time that he signed the employment papers.

Claimant has worked as a mechanic for approximately 27 years and testified that he only occasionally bended and stooped and never spent much time in a catcher's position. Claimant has never had an injury or pain in his knee prior to this occurrence. Claimant worked for Respondent at Liftruck until approximately July 23, 2002, and quit for reasons unrelated to the injury. Claimant began working as a mechanic on GM vehicles about nine months prior to the hearing.

An MRI taken on July 2, 2003, of Claimant's right knee showed a "tear through the posterior aspect of the body of the medial meniscus which does extend to the inferior meniscal surface," mild degenerative changes, mild sprain of the lateral collateral ligament, and a small Baker cyst.

Steve Johnson, owner and parts manager of Liftruck, testified that he remembers Claimant limping around the shop and that he saw Claimant's swollen knee.

Steve also testified that Claimant told him about the injury:

Q: And as you are aware, we're here today regarding an accident that may have happened at Liftruck. Do you know anything about that accident? What has Mr. Deffenbaugh told you occurred at your Liftruck facility?

A: At one time, and I could not give you the date, Mr. Deffenbaugh did tell me that his leg was bothering him and he wanted to take off work and get off of his feet. He rolled his pants leg up and he even had a brace on and showed me that his leg was swollen.

Q: Did he tell you that he got hurt at work?

A: At this particular time when he showed me this, I do not remember him telling me that he got hurt at work. Now, at a later time, he did.

On cross-examination by Claimant, Steve confirmed that Claimant told him of his knee problems and the he in turn relayed the message to Rick Johnson:

Q: And my only this is, is there's no way that I would have ever confronted you with that problem and not told you how I hurt my knee. I can remember talking about the Yale lift truck. Now, it may not have been anything that really passed over to you, but I know that you told me that you would go home that evening and you would discuss it

with your family. You did say that?  
You remember that?

A: Yes, I did. Because you--

Q: Did you ever come back-- did you ever get back with me or anything though?

A: Ed, when you discussed this with me it was on a Thursday and you took off that Friday and you was gone for the whole next week.

Q: Yeah.

A: So I can't honestly say that I never said anything to you because the hiring and them situations is not what I'm required to do at my job.

Q: Well, I understand.

A: But I did approach Rick, the person that did the hiring, and told him your situation of what happened and the reason you were taking off because of your leg and wanted to get off of your feet.

On redirect examination, Steve testified that he does not remember Claimant telling him that the injury happened at work. However, recross, Steve stated that he could not say whether or not Claimant told him that the injury happened at work:

Q: Steve, you say that you don't recall, but you cannot say that I didn't tell you that I was hurt on a Yale lift truck, working on a Yale lift truck?

A: What I recall, Ed, was at one time -  
- and I'm not saying -- I can't say  
that you did not say --

Q: That's all I'm asking. That's all I  
asking.

A: At one time - - point or another you  
did say you bent down and your knee  
popped. Now, I don't know what you  
was doing or what you were saying,  
but the best that I can recall it  
was after you came back to work  
after the week that you had took  
off. You had said something of that  
nature. Now, it's just been too  
long. I'm being honest here. I  
just -- I don't remember. I don't  
recall. And I think I've had this  
conversation with you before. I  
mean, I'm sorry, but I just don't--

Claimant has established by a preponderance of the  
evidence that he incurred a compensable specific incident  
injury that is identifiable by time and place of occurrence.  
Respondent's witness, Steve Johnson, does not dispute that  
Claimant was working for Liftruck at the time of his injury,  
that Claimant described the incident and showed him the  
swollen knee, that Claimant inquired regarding insurance to  
treat the knee, or that Claimant told Steve that the injury  
was work related. Further, Respondents do not dispute that  
Claimant limped around the shop for a few days and that  
Liftruck employees saw Claimant's swollen knee. Instead,  
the dispute is merely when Claimant told Respondents that

the injury was work related. It is evident from the record that Steve cannot remember when he was told, but that he does remember Claimant informing him of the injury: "At one time - - point or another you did say you bent down and your knee popped." It is also undisputed that, though Claimant was an employee of TEC, that he was not given orientation or any additional information about TEC's reporting procedures except for an employment agreement that he hurriedly signed during the midst of his work. Respondents do not dispute that Claimant sought medical treatment soon after the injury from TEC's carrier, which resulted in a deposition being taken of Claimant.

I also find that the objective medical evidence shows that Claimant incurred a tear to the meniscus of his right knee, which is indicative of an acute injury. The parties do not dispute that Claimant's right knee was injured during the week of June 19, 2002, and that Claimant reported this injury on June 20, 2002.

Finally, I find that Claimant credibly testified that he did not have any knee pain or injury prior to this occurrence, that he experienced severe knee pain and burning while working at Trucklift on or about June 19,

2002, and that he soon thereafter sought treatment from Respondents to no avail.

Based on the foregoing, I find that Claimant has met his burden of proof and should be compensated for his right knee injury. I, therefore, dissent from the majority opinion.

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SHELBY W. TURNER, Commissioner