

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F308399

MICHAEL D. BLACKBURN,
EMPLOYEE

CLAIMANT

RYAN'S FAMILY STEAK HOUSES, INC.,
EMPLOYER

RESPONDENT

ZURICH AMERICAN INSURANCE CO.
and CRAWFORD & COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 17, 2005

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

Claimant represented by the HONORABLE SHANNON MUSE
CARROLL, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed April 12, 2005. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.
2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times, including July 25, 2003, when the claimant's average weekly wage was \$176.01.

3. The preponderance of the evidence shows that the claimant suffered a compensable injury to his left knee on or about July 25, 2003, and has incurred reasonably necessary medical and related expenses which are the responsibility of the respondents.

4. As a result of his compensable injury, the claimant was temporarily totally disabled from the date of injury until September 1, 2004, when he returned to the workforce, within the meaning of Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146 (2001).

5. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the April 12, 2005 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the

opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion which affirms and adopts the Administrative Law Judge's opinion finding that the claimant sustained a compensable injury for which he is entitled to benefits. Based upon my de novo review of the entire record, I find that the claimant has failed to meet his burden of proof.

The claimant contends that he sustained a compensable injury to his left knee on July 25, 2003. Conversely, respondents contend that the claimant's alleged injury is not supported by a preponderance of the evidence. The Administrative Law Judge opinion which the majority now adopts, finds that a medical record five days after the claimant's alleged injury records the presence of minimal edema by the attending nurse. After reviewing the medical records in their entirety, I cannot agree with the assessment.

The claimant first sought medical treatment at St. Joseph's Mercy Medical Health Center Emergency Room in the early morning hours of July 26, 2003. At that time the treating physician recorded the following history:

The patient is a 20 year old gentlemen who presents to the emergency department complaining of some pain to the medial aspect of his left knee. He says the initial injury of his knee was back in boot camp. I do not believe he has ever had surgery on this knee. He thinks he re-injured it recently. He has been taking no medication for his discomfort. He has been able to ambulate without assistance. There was no locking to the knee, no instability to the knee. No swelling to the knee. No rash.

The nurse assessment noted that the claimant ambulated into the emergency room with complaints of pain in his left knee. This assessment further noted the claimant did not present with edema and that the claimant's skin was intact. A physical examination of the claimant by the attending physician failed to reveal the presence of any objective medical findings of an injury. Specifically, the physical examination revealed:

Examination of the left knee reveals the patella to be in the correct anatomical position. There is no effusion to the knee. He has tenderness involving the medial meniscus and the medial collateral ligament. There is no instability noted. There is no locking. The anterior cruciate ligament appears to be stable. No popliteal fossa tenderness or masses.

Likewise, x-rays performed at that time did not reveal any fractures, dislocation, or other acute bony abnormality. More specifically, with regard to swelling or edema, the radiologist noted; "I do not see any definite joint effusion."

The claimant returned to St. Joseph's emergency department later in the day on July 26, 2003, to obtain a drug screen per his employer's request. Although the medical records from that visit described the claimant's complaints of knee pain and his previous treatment, no examination of the claimant's left knee was conducted at that time. The claimant was referred to Dr. Atta for follow-up treatment.

The claimant returned to the emergency room on July 31, 2003, with complaints of increased pain and swelling. The nurse assessment from this visit notes that the claimant presented with increased pain to his knee with bruising to the inner lateral knee. The claimant also complained that the pain medication did not relieve his pain. After placing the claimant in an exam room, the nurse recorded, "knee immobilizer removed. ø bruising to knee. Minimal edema." However, the physician attending the claimant did not note the presence of any swelling or edema in the claimant's left knee. The physical examination revealed:

Left knee, no swelling, no effusion. No erythema, no palpable cord to calf or thigh. No thigh or calf tenderness. Knee itself has tenderness to palpation over the medial aspect of knee. He has no joint line tenderness, no patellar apprehension. Lachman negative. He does have increased pain with stress of medial collateral ligament but no laxity.

Again under the Emergency Room Course section of the July 31, 2003, medical report, the physician specifically noted "no acute evidence of worsening, swelling erythema." At that time the claimant was diagnosed with a possible medial collateral ligament strain.

Given the claimant's complaints of swelling it is conceivable that the claimant's knee may have appeared to the nurse after the knee immobilizer was removed as possibly presenting with minimal edema. However, as is clearly noted by the physician who physically examined the claimant, the claimant's left knee did not have any swelling or effusion present. Moreover, despite the claimant's complaint of bruising, neither the nurse nor the physician noted the presence of any bruising of the claimant's knee. Thus, while the claimant may have perceived bruising and swelling, I cannot find that the greater weight of the evidence supports a finding of any bruising, swelling or edema of the claimant's left knee. The claimant was diagnosed with a possible medial collateral ligament strain, unfortunately, the medical evidence does not support this diagnosis with any objective medical findings.

The claimant alleges that he sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, he must prove by a preponderance of the evidence (1) the injury arose out of and in the course of his employment; and (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death. See Ark. Code Ann. § 11-9-102(4) (A) (i) and § 11-9-102(4) (E) (i) (Repl. 2002). He must also prove (3) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See Ark. Code Ann. § 11-9-102(4) (A) (i). Moreover, the claimant must establish (4) that the compensable injury is supported by 'objective findings' as defined in § 11-9-102(16)." Ark. Code Ann. § 11-9-102(4) (D); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 31 Ark. App. 804, 20 S.W.3d 900 (2000). If the claimant fails to establish by a preponderance of the credible evidence any of the requirements for establishing the compensability of the injury, he fails to establish the

compensability of the claim, and compensation must be denied. Jerry D. Reed, supra.

In my opinion, the claimant has failed to prove by a preponderance of the evidence that he sustained an injury to his left knee which is supported by objective medical findings. Therefore, I am constrained to find that the claimant has failed to prove the compensability of this claim. Accordingly, I find that the decision of the Administrative Law Judge should be reversed and this claim should be denied and dismissed.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner