

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200267 and F208445

FREEMAN E. GREEN, EMPLOYEE	CLAIMANT
COOPER STANDARD AUTOMOTIVE, INC., EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, CARRIER	RESPONDENT

OPINION FILED APRIL 22, 2005

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

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE NORWOOD PHILLIPS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from the Amended Opinion of the Administrative Law Judge filed April 16, 2004.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact.
3. I find that the claimant failed to prove by a preponderance of the evidence that additional medical treatment is reasonably necessary for treatment of his compensable injuries.

4. The respondents controverted the claimant's entitlement to any additional medical treatment or temporary total disability compensation.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's opinion finding that the claimant is not entitled to receive additional medical treatment or additional temporary total disability compensation. It appears that but for the Majority's findings regarding whether the claimant's condition was caused by a pre-existing condition, there is no dispute regarding the claimant's entitlement to temporary total disability benefits or additional medical benefits. The contemporaneous medical records indicate that the claimant suffered from previous compensable injuries which directly affected and contributed to a deteriorating condition in his knees. These records are supported by the claimant's credible and unrefuted testimony that he had no knee problems prior to his admittedly compensable injuries. Therefore, I respectfully dissent.

The claimant played high school basketball from 1980-1983. He subsequently played college basketball for four years and played professional basketball overseas for approximately ten months. His career ended around 1988 due

to lack of funding for the professional team for which he played. The claimant had no knee injuries or knee pain during the time he played basketball or prior to working for the employer.

The claimant began working as a press operator for the employer in 1992. His job required him to frequently lift, stoop, bend, and step onto and off a machine. On October 22, 1999 the claimant was at work, stepped down from a machine, and felt his knee pop. The claimant was initially treated by Dr. Bryant. On October 27, 1999 Dr. Bryant treated the claimant and noted he had patellofemoral chondrosis with possible meniscal injuries. The claimant was dissatisfied with Dr. Bryant's treatment and asked for a referral to another doctor. The claimant was referred to Dr. James Mulhollan. On November 9, 1999 Dr. Mulhollan performed an MRI and observed a torn medial meniscus. Surgery was subsequently performed to correct the tear.

On December 18, 2001 the claimant slipped on an oily spot while at work. Dr. Bryant diagnosed the claimant with lumbar strain with possible disc disease and left knee patellofemoral chondrosis with possible meniscal injuries. On January 23, 2002 Dr. Bryant performed surgery in the form

of a left knee arthroscopic partial medial meniscectomy and a left knee arthroscopic chondroplasty and debridement.

On July 1, 2002 the claimant returned for a follow up appointment with Dr. Bryant. The claimant reported he had no pain in his left knee but complained of pain in his right knee. Dr. Bryant ordered an MRI. The MRI revealed, "elongation attenuation and partial thinning of the overlying hyaline cartilage of the medial knee medial meniscus." The Diagnostic Imaging Report also noted the claimant had a, "Horizontal tear of posterior horn of the medial meniscus, attenuation and probably partial tear of the posterior cruciate ligament. Thinning of the overlying hyaline cartilage of the medial knee joint space." On July 15, 2002 the claimant returned and complained of left knee pain. He was diagnosed with, "left knee patellofemoral chondrosis with possible meniscal injuries." On July 17, 2002 Dr. Bryant performed right knee arthroscopic partial medial meniscectomy and right knee arthroscopic chondroplasty with debridement.

The claimant continued to have regular doctor visits regarding his knees. On November 19, 2002 the claimant returned to Dr. Bryant complaining of bilateral

knee pain. Dr. Bryant advised the claimant that he had, "athlete's knee" with "long-standing cartilage damage from many years duration." He also advised the claimant he would continue to have problems performing his job due to his prior knee condition.

On December 23, 2002, Dr. Mulhollan composed a letter indicating that he had performed surgery on the claimant in 1999 and that he had reviewed subsequent medical records regarding the claimant's knees. Dr. Mulhollan indicated that, "There is a history, of trauma, so these have to be considered work-related." However, Dr. Mulhollan also indicated he believed the claimant's condition was due to an underlying process of varus degeneration and that the claimant's condition was just a progression of that illness.

On January 28, 2003 Dr. Mulhollan composed a letter recommending the claimant work at a sedentary job and indicating that lifting, squatting, climbing, and twisting would aggravate the claimant's condition. On May 1, 2003, Dr. Mulhollan restricted the claimant from working and referred him to Dr. Scott Bowen to discuss the possibility of having total knee replacement. During that visit,

Dr. Mulhollan noted he believed the surgery was not due to any work related injury.

Dr. Bowen subsequently treated the claimant and discussed treatment options of receiving an upper tibial osteotomy or total knee replacement. On July 3, 2002 Dr. Bowen composed a letter stating that he believed the claimant would be a candidate for an upper tibial osteotomy. The letter states, "I want to make this clear that this is not a new injury but just a progression of his arthritic condition through his medial meniscectomies and injuries related to his work."

_____The Majority, by affirming the Administrative Law Judge, found the claimant should be denied additional medical treatment. This finding was based on the premise that the claimant failed to prove the continued treatment was causally related to a compensable injury. Likewise, the Majority denied temporary total disability benefits due to the finding that the claimant suffered from a pre-existing condition and therefore did not remain in his healing period. The Majority argues that the claimant's receiving surgery for the tendon and cartilage tears resulting from his prior compensable injuries is a reason to prefer

Dr. Mulhollan's opinion that the claimant's condition was caused by a pre-existing condition. This reasoning ignores the fact that the claimant was referred by Dr. Mulhollan to Dr. Bowen, apparently to receive more specialized treatment. The finding also ignores the testimony by Dr. Bowen that the claimant's condition was likely accelerated by his compensable injuries and fails to recognize Dr. Mulhollan's own medical records indicating that the claimant's prior surgeries were job related and that his continuation of performing job duties would aggravate his condition.

The claimant has the burden of proving by a preponderance of the evidence that his condition is causally related to his employment. See Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000). Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Workers' Compensation Commission. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 188. 875, S.W.2d 857 (1998). 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. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787

S.W.2d 664 (1990); Minor v. Poinsett Lumber & Mfg. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). As is commonly stated, the employer takes the employee as he finds him. Murphree, supra. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or combining with the pre-existing condition. See Arkansas Power & Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

The respondent argues the standard should be proof that the incident was the "major cause" for the injury. While the Majority does not specifically address this issue,

I will address it, as it is unclear whether the Majority agrees with the respondent's contention.

The correct standard is not that the injury be the "major cause". In Williams v. L & W Janitorial, Inc., the claimant was seeking medical benefits and temporary total benefits and was awarded benefits after suffering an injury qualifying as aggravation to a pre-existing knee condition. The court awarded benefits and noted that the proper standard for an injury that was caused by an injury involving a specific injury would not be subject to using the "major cause" standard in instances where the claimant is seeking temporary total benefits or medical benefits. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1 (2004), 145 S.W. 3d 383 (2004) citing Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). As the claimant in the present case suffered an injury due to the specific incidents in 1999 and in 2001 and is only seeking temporary total benefits and medical benefits, the proposed "major cause" standard is incorrect and the proper standard would be that the medical opinion be stated within a reasonable degree of medical certainty.

The facts of this case are remarkably similar to those in Williams v. L & W Janitorial, Inc. In Williams, the claimant first injured her right knee in 1996 due to slipping and falling at work. Prior to that she had no history of injuries or pain with regard to her knees. After she slipped she took Tylenol for the pain.

In November 2000 the claimant slipped on some stairs at work. She hit her left knee. In December 2000, Dr. Kenneth Martin took an x-ray and testified that the x-ray showed arthritis and that there was not much space between the claimant's bones. He also testified the arthritic condition could not have occurred between the injury date and the time he examined her. In January 2001, Dr. Martin did an MRI and found osteoarthritis and a torn meniscus. Dr. Martin recommended surgery in the form of a total knee replacement and concluded that he could not determine whether the tear was caused by the work injury or whether it was due to her pre-existing arthritis. However, he agreed with a conclusion by another doctor that had treated the claimant, Dr. Mulhollan, that the primary reason for the surgery would be due to the pre-existing arthritis and that an injury would accelerate the process of the

degenerative arthritis. Dr. Martin also testified that the injury would cause her arthritic symptoms to become worse.

Id.

The Court of Appeals, in awarding the claimant benefits, noted that both doctors agreed that the major cause for the surgery was not due to the work injury, but rather due to the pre-existing arthritis. The Court reasoned that since the claimant was only seeking temporary total disability benefits and additional medical treatment the major cause standard did not apply and that because both doctors agreed the work injury was at least a factor in the need for the surgery causation existed. Id. This finding was important as it established that in order to receive additional medical treatment or temporary total benefits the work injury only needs to be a factor in the injury rather than the major cause or the predominant reason for needing additional treatment.

The present case is similar because just as in Williams, the claimant in the present case had pre-existing arthritis, but the medical evidence indicates that the claimant's compensable injuries were at least a factor in his continuing knee condition and need for surgery. This is

evidenced by Dr. Bowen's testimony that the claimant's condition was accelerated and worsened by his compensable injuries. Dr. Bowen's testimony is supported by Dr. Mulhollan's letter indicating that the claimant would be better off by working in a sedentary position and that activities like those performed in his work would aggravate his condition and acknowledging his previous surgeries were due to trauma from work-related activities. While Dr. Mulhollan's letter does not specifically state that the claimant's compensable injuries accelerated the claimant's degenerative condition, it does indicate that his work would "aggravate" his condition, implying the same would happen between the time of his surgeries and the time he concluded the claimant's condition would continue and worsen if he continued working in the same capacity. It also acknowledges his prior condition had to be associated with trauma due to performing work duties which would imply that the claimant's condition was worsened due to his compensable injuries and subsequent performance of work.

The Commission has the authority to prefer one medical opinion over another; however, in this instance, there is no sound reason to prefer the opinion of

Dr. Mulhollan over Dr. Bowen's. Both doctors agree that the claimant had pre-existing arthritis prior to his injuries in 1999 and 2001 and both doctors agree that the claimant's knee surgeries were due to work-related injuries. As evidenced by Dr. Mulhollan's letter composed on December 23, 2002 and Dr. Bowen's letter composed on July 3, 2002, both doctors agree that the claimant's job duties would exacerbate his condition indicating that causation exists. Despite these agreements, Dr. Mulhollan still concluded the claimant's need for additional treatment was not due to his prior compensable injuries or work. However, Dr. Mulhollan did not specifically address whether the claimant's compensable injuries accelerated his condition or combined with his pre-existing condition to worsen his condition. The fact that Dr. Mulhollan did not specifically address that issue, in conjunction with his previous conclusion that the claimant's work would aggravate his condition seems to indicate the claimant's prior compensable injuries were at least a factor in his need for additional treatment and would therefore be deemed a compensable injury under the rationale used in Williams.

Dr. Bowen testified that the claimant was likely predisposed to arthritis due to his family history and his participation in sports but also said, "I think that the loss of the cartilage can be attributed to his work, certainly does have a place here. It's a feature that certainly aggravates and accelerates the process." This indicates that the claimant's condition was aggravated directly as a result of his previous injuries in 1999 and 2001. The existence of causation is further evidenced by the fact that the claimant never suffered from knee pain prior to his admittedly compensable injuries in 1999 and 2001, yet after the surgeries, he had continued knee problems and suffered from pain. As the claimant never suffered from pain before his injuries, it is clear the two compensable injuries were directly related to his subsequent knee condition.

Furthermore, Dr. Mulhollan's practice is limited to performing arthroscopic surgeries, per his letterhead, whereas, there appears to be no such limitation in Dr. Bowen's practice. In fact, Dr. Mulhollan referred the claimant to Dr. Bowen for consideration of more specialized treatment in the form of a knee replacement, which would

indicate that perhaps Dr. Bowen has more knowledge in regards to treating conditions like the claimant's. Furthermore, Dr. Mulhollan's opinion was submitted in the form of medical records that amounted to hearsay whereas Dr. Bowen submitted medical records and testified, which gave both parties the ability to clarify his findings. Therefore, Dr. Bowen's opinion should be preferred.

The Majority's only reason for denying benefits appears to be due to the erroneous finding that the claimant had pre-existing arthritis and that his inability to work and need for additional treatment was solely due to that condition. As outlined in Williams, if the claimant's work-related injury was a factor in the claimant's ongoing condition, then despite the fact the pre-existing arthritis is the primary cause for the condition, it is still a compensable injury. The medical records and the testimony of Dr. Bowen clearly indicate that while the claimant had pre-existing arthritis, the claimant suffered from two specific injuries that aggravated the condition and combined with his pre-existing condition in order to accelerate the progression of his illness. As such, the claimant's injuries in 1999 and 2001 were factors in the claimant's need for

additional medical treatment and inability to work. Accordingly, the claimant did sustain a compensable injury and his need for additionally treatment is reasonably necessary to treat that injury. For these reasons I respectfully dissent.

SHELBY W. TURNER, Commissioner