

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F110103

JUDITH L. MANNS,
EMPLOYEE CLAIMANT

EDWARDS GROCERY,
EMPLOYER RESPONDENT

UNION STANDARD INSURANCE COMPANY,
INSURANCE CARRIER RESPONDENT

OPINION FILED JUNE 13, 2005

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

Claimant represented by the HONORABLE FREDERICK S.
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE WILLIAM C.
FRYE, 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 August 20, 2004. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed at all relevant times.
3. On August 17, 2001, Claimant sustained a compensable injury to her left knee.
4. Claimant's right knee injury has been controverted by Respondents.

5. Claimant's right knee injury is a compensable consequence of her compensable left knee injury. Dr. Arnold's testimony establishes a causal connection between the original left knee injury and the compensable consequence, the right knee injury. Repeated identification of effusion in Claimant's right knee constitutes the required objective findings in support of the medical evidence.
6. Claimant is entitled to temporary total disability benefits from October 16, 2003, to a date yet to be determined, due to the injury to her right knee, a scheduled portion of the body. These benefits shall be based on an average weekly wage of \$313.00. Claimant is not working; Dr. Arnold's testimony and the medical records demonstrate that she remains within her healing period.
7. Respondents are liable for two unpaid medical statements to North Arkansas Regional Medical Center; one is in the amount of \$1,130.00 and the other is in the amount of \$33.00. These statements stem from reasonably necessary medical treatment in connection with Claimant's compensable left knee injury.
8. Claimant's attorney is entitled to the statutorily prescribed attorney's fee allowed by Ark. Code Ann. § 11-9-715 on (a) indemnity benefits controverted and awarded in connection with Claimant's right knee injury; and (b) the difference in temporary total disability benefits due based upon an average weekly wage of \$313.00 for Claimant's left knee injury, and those temporary total disability benefits actually paid by Respondents prior to their correction of the underpayment. Respondents stipulated to controverting Claimant's right knee injury; they controverted the underpayment of temporary total disability payments for her left knee

injury to the time they corrected the underpayment.

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 August 20, 2004 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 respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that the problems with her right knee are a compensable consequence of the claimant's compensable left knee injury. Based upon my de novo review of the record, I find that the claimant has failed to meet her burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant sustained an admittedly compensable injury to her left knee on August 17, 2001,

when she tripped over a box of bread products in the respondent employer's freezer. The claimant ultimately underwent a total knee replacement of the left knee on February 12, 2003. In all the months of treatment that the claimant had regarding her left knee the claimant did not once complain of pain in her right knee. The claimant confirmed that she expressly told Dr. Arnold and Dr. James Mulhollan that she had never had any right knee problems. It was not until June of 2003 that the claimant stated that she had a problem with her right knee. Doctor Arnold's clinic notes dated June 10, 2003, indicate that the claimant had developed some right knee pain.

Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002) defines "compensable injury" as "[a]n accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is 'accidental' only if it is caused by a specific incident and is identifiable by time and place of occurrence." Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). The phrase "arising out of the employment refers to the origin or cause of the accident," so the employee was required to show that a causal connection existed

between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). An injury occurs "'in the course of employment' when it occurs within the time and space boundaries of the employment, while the employee is carrying out the employer's purpose, or advancing the employer's interest directly or indirectly." City of El Dorado v. Sartor, 21 Ark. App. 143, 729 S.W.2d 430 (1987). Under the statute, for an accidental injury to be compensable, the claimant must show that he/she sustained an accidental injury; that it caused internal or external physical injury to the body; that the injury arose out of and in the course of employment; and that the injury required medical services or resulted in disability or death. *Id.*

Additionally, the claimant must establish a compensable injury by medical evidence, supported by objective findings as defined in §11-9-102(16). Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000). The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. See Ark. Code Ann. § 11-9-

102(4) (E) (i) (Repl. 2002); Clardy v. Medi-Homes LTC Servs., 75 Ark. App. 156, 55 S.W.3d 791 (2001).

In my opinion, there is no credible evidence establishing a causal connection between the claimant's admitted compensable left knee injury and her right knee problems. The claimant's right knee problems began almost 2 years after the claimant sustained her compensable left knee injury. The claimant testified that she had no problems whatsoever with her right knee until June of 2003. Despite this testimony, Dr. Arnold speculated that the right knee problem was related to overuse and compensation placed on the right knee. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

The claimant testified that from August of 2001 through April of 2002 she did have an altered gait and she had no right knee problems. The claimant testified that from April of 2002 through November of 2002 she worked as a LPN and was on her feet approximately 6 hours per day. She did not have any right knee problems during this time at all.

The medical evidence demonstrates that the claimant reported to Dr. Arnold on March 5, 2003, that she was doing well and that she was "quite happy." The claimant stated that at that point everything was fine and she was even walking half a mile per day.

The claimant testified that her right knee blew out at home. She testified as follows, "That's when it started. Up to that point, I was having no problems whatsoever." It is interesting to note that the claimant reported right knee pain and cramping sensation in her right knee as far back as 1994. The claimant admitted that these were the same symptoms she is having now with her right knee.

In short, I find the claimant has failed to prove by a preponderance of the evidence that her right knee problems were a compensable consequence of her admittedly compensable left knee injury. Accordingly, I would reverse the decision of the Administrative Law Judge.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner