

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F308759**

**MARK L. THOMAS, EMPLOYEE**

**CLAIMANT**

**ENTERGY ARKANSAS, INC.,  
A SELF INSURED EMPLOYER**

**RESPONDENT**

**OPINION FILED MAY 10, 2005**

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

Claimant represented by HONORABLE DONALD C. PULLEN, Attorney at Law, Hot Springs, Arkansas.

Respondent represented by HONORABLE JIM L. JULIAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal the decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that he sustained a compensable new injury or an aggravation of his previous right knee condition on March 23, 2003, a finding that the claimant was entitled to medical treatment in the form of arthroscopic knee surgery performed on July 22, 2003, and the finding that the claimant was entitled to a total knee replacement surgery on September 10, 2003. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant has been an employee of the respondent employer for approximately 26 years. He works as a control room operator at the respondent employer's Lake Catherine Plant. On May 16, 1998, the claimant suffered a compensable on-the-job injury when he stepped through a threshold and hyper-extended his right knee. After the 1998 injury, the claimant began treatment with Dr. Dale Kincheloe. After conducting examinations and reviewing an MRI, Dr. Kincheloe determined that the claimant suffered from a degenerative condition in the right knee and a tear of the medial meniscus. On July 31, 1998, Dr. Kincheloe performed an arthroscopic medial menisectomy procedure on the claimant's right knee.

The claimant continued to complain of pain in his knee and he was sent to Dr. James Mulhollan in December of 2000. Dr. Mulhollan could not conduct an MRI in his office, due to the claimant's weight, so he ordered the claimant to obtain an MRI at the Westside Open MRI and Diagnostic Center. The MRI results generally showed that the claimant was suffering from a severe degenerative condition in his right knee. Dr. Mulhollan determined that the medial compartment was dramatically overloaded from a combination

of varus alignment, significant exogenous obesity, and surgical lack of medial meniscus. Dr. Mulhollan recommended a conservative care program, including weight reduction and exercise. The claimant quit seeing Dr. Mulhollan after a December 21, 2002, visit in which the claimant fainted when Dr. Mulhollan attempted to explain the severity of the claimant's condition and need for treatment.

The claimant began treatment with Dr. Reginald Rutherford in February of 2001. The claimant was prescribed Celebrex and Zostrix cream. The claimant was also advised to exercise and reduce his caloric intake to lose weight.

On March 23, 2003, the claimant was training another Entergy employee, Mr. Thomas Wayne Jackson, to be a boiler operator. The claimant and Mr. Jackson were climbing a staircase and the claimant testified that he felt a severe pain in his right knee. The claimant did not fill out an injury report that day. The claimant did not fill out an injury report until August 6, 2003.

The claimant did not notify his supervisor, Mr. David Hessong, that he had an accident at work or that he had suffered an on-the-job injury. In July of 2003, when asked by his supervisor if he had an accident at work since

1998, the claimant responded that he had not. The claimant did not report to the supervisor for operation, Mr. Gene Safford, that he had an accident in which he injured his right knee on March 23, 2003.

On April 8, 2003, the claimant sought medical treatment from Dr. James Humphreys complaining of pain in his right knee. The notes from the visit do not reflect that the claimant reported that he suffered an on-the-job injury on March 23, 2003.

The claimant then saw Dr. Michael Young, and on June 13, 2003, underwent an MRI. Dr. Young determined that claimant developed degenerative changes in his knee and had a small radial tear of the medial meniscus and osteophyte formation. The claimant had arthroscopic surgery on July 2, 2003, and total knee replacement surgery on September 10, 2003. The claimant continues to work for the respondent employer at the Lake Catherine Plant.

In Maverick Transp. V. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000), the Arkansas Court of Appeals discussed the difference between an aggravation and a recurrence as it relates to workers' compensation law. The Court stated:

An aggravation is a new injury resulting from an independent incident. Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996). Only where it is found that a second episode has resulted from an independent intervening cause is liability imposed upon the second carrier.

Id. at 130, 10 S.W.3d at 468. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The test to determine whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is

no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984), Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), Davis v. Old Dominion Freight Line, Inc. 341 Ark. 751, 20 S.W.3d 326 (2000).

After conducting a de novo review of the record, we find that the evidence does not support a finding that the claimant sustained a new injury or an aggravation of his 1998 injury. The evidence demonstrates that the claimant suffered from a pre-existing degenerative condition that eventually would have required him to have surgery. Dr. James Mulhollan reviewed the claimant's medical history and testified via deposition that the claimant had a degenerative condition of the knee before the 1998 injury and that the degenerative condition allowed the meniscus tear of 1998 to occur. Dr. Mulhollan also testified that the condition was a by-product of age and degeneration. In addition, Dr. Mulhollan testified that the tear could have happened outside the job or on the job. The claimant would have required knee replacement surgery regardless of whether

or not the alleged injury occurred in March of 2003. Dr. Mulhollan testified that it was "absolute" in December of 2000 that the claimant was going to need total knee replacement surgery because of his degenerative condition. According to Dr. Mulhollan the claimant's preexisting "varus degenerative process that he has present in his knee" is the cause of the total knee replacement not the claimant's 1998 injury or alleged March 2003 injury.

Dr. Young also testified that the claimant suffered from a degenerative condition and that obesity and trauma advanced the degenerative process. Dr. Young testified that the degeneration of the claimant's knee and the changes that he saw during the arthroscopic surgery in July of 2003, made him believe that the claimant needed a total knee replacement. In short, the medical evidence does not support a finding that the claimant sustained a new injury in March of 2003.

Accordingly, we find that the claimant has failed to prove by a preponderance of the evidence that he sustained a new injury or aggravation in March of 2003. We further find that the claimant has failed to prove by a preponderance of the evidence that the treatment he received

after March 2003 is causally related to his 1998 compensable injury. Therefore, we reverse the decision of the Administrative Law Judge. This claim is hereby denied and dismissed.

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 write this Dissent to object to the Majority's denial of the requested benefits in this claim. I am disturbed by the Majority's apparent conclusion that a claimant who injured his knee at work is not entitled to further medical treatment, including knee replacement surgery because he has degenerative joint disease. This conclusion is disturbing because the degenerative joint disease is, to a great degree, the result of the claimant's job related knee injuries. I believe that the Majority did

not correctly evaluate the facts or apply the relevant law to this situation. For that reason, I respectfully dissent.

The claimant has suffered two injuries to his knee while acting in the course of his employment with the respondent. However, the Majority appears to have accepted the medical theory of Dr. James Mulhollan, who is of the opinion that knee injuries are occasioned by degenerative joint disease, not traumatic injuries. Consequently, Dr. Mulhollan has opined that the accident the claimant suffered on March 23, 2003, was not an aggravation of his previous knee injury but was part of the "degenerative process" that occurred throughout his lifetime. I have previously expressed my opinion of Dr. Muhollan's conclusion that all knee injuries are the result of degenerative disease and not traumatic incidents. I am concerned that the Majority's continued acceptance of this position will result in a near blanket denial of claims for benefits based upon traumatic knee injuries.

In reversing the Administrative Law Judge and denying the claimant his requested medical treatment, the Majority is not giving weight to the credible opinion of his treating physician, Dr. Michael Young, a Little Rock

orthopedist. Dr. Young diagnosed the claimant with a tear in his medial meniscus after his March 2003 accident, and later performed arthroscopic surgery and total knee replacement surgery on the claimant. He later opined that while the claimant suffered a degree of degenerative joint disease, the development and severity of this condition was substantially enhanced by the claimant's compensable injury in 1998, and the accident that occurred in March 2003. According to Dr. Young, the claimant's need for knee replacement surgery was accelerated by his job related injuries. In fact, even Dr. Mulhollan did not deny that traumatic injuries, such as those suffered by the claimant, will cause degenerative joint disease to become more severe. In my opinion, this medical evidence is more than sufficient to establish that the claimant is entitled to the additional medical treatment he has requested and the attendant disability benefits.

In my opinion, the Majority's position in the present claim is similar to the flawed reasoning it relied upon in Parker v. Atlantic Research Corporation, \_\_\_ Ark. App. \_\_\_, \_\_\_ S. W. 3<sup>rd</sup> \_\_\_ (June 30, 2004). In that case, the Commission held that, "as a matter of law" an injured

worker who aggravated preexisting degenerative disc disease could not meet the major cause requirement to demonstrate a compensable injury. The Court specifically rejected the Commission's conclusion in that case and held that a preexisting condition was not a bar to establishing a claimant's entitlement to additional benefits because of an otherwise compensable aggravation. In setting out their holding, the Court of Appeals stated that, "construction of the Workers' Compensation Act must be done in light of the expressed purpose of that legislation, which is to timely pay temporary and permanent disability benefits to all legitimately injured workers who suffer an injury or disease arising out of and in the course of their employment, to pay reasonable and necessary medical expenses resulting therefrom, and then return the worker to the workforce."

I find that there is no doubt that the claimant suffered a compensable aggravation of a preexisting condition of his right knee on March 23, 2003. While there was some differing testimony as to exactly when the claimant advised his immediate supervisor of this injury, there is no real dispute that the accident occurred. I believe that the Commission is applying a legal standard which will be

impossible for any claimant to meet and is impermissibly narrowing the Workers' Compensation Act. For that reason, I respectfully dissent from the Majority's opinion.

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SHELBY W. TURNER, Commissioner