

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502152

SALLY CLEVELAND,
EMPLOYEE

CLAIMANT

FOOD PLUS V,
EMPLOYER

RESPONDENT

STATE FARM & CASUALTY COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 13, 2006

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

Claimant represented by the HONORABLE MARK FORD,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE CAROL 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 June 30, 2006. 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 this claim.
2. On December 9, 2003, the relationship of
employee-employer existed between the parties.

3. The claimant sustained compensable injuries to her left knee and left low back on December 9, 2003.

4. Medical expenses have been paid to date for the claimant's left knee and low back injuries.

5. The claimant is entitled to a compensation rate of \$90.00 for temporary total disability benefits and permanent partial disability.

6. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right knee resulting from overuse due to her compensable left knee injury.

7. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries to her left knee and back as well as her right knee at the respondents' expense.

8. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability from March 4, 2004 to a date to be determined except for a period of time from September 7, 2005 through September 20, 2005. See Wheeler Construction Company v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Also see Ark. Code Ann. §11-9-521(a).

9. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

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 June 30, 2006 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 finding that the claimant sustained a compensable right knee injury as a result of its overuse from her compensable left knee injury for which she is entitled to benefits. Based upon my de novo review of the entire record, I find that the claimant has failed to meet her burden of proof.

With regard to her alleged compensable consequence injury to the right knee, the medical records reveal that the claimant began complaining of right leg pain on January 2, 2004. At that time the claimant told her treating physician that "she has had prior surgery on her right knee and feels like her fall and the resulting transfer of weight may have aggravated

that pain." X-rays were take of the claimant's right hip and knee on January 27, 2004. These diagnostic tests revealed moderate arthritic changes in the right knee with evidence of chondrocalcinosis. The radiologist opined that these findings could represent calcium pyrophosphate deposition disease. The physical therapist's report dated February 17, 2004, reflects that the claimant reported that she had fallen again at work and heard a pop in her right knee. The therapist's report indicates that the claimant reported this to her employer but that the employer did not complete any paper work on this injury. When the claimant was seen by Dr. Wolfe on February 26, 2004, she reported this slip incident to Dr. Wolfe as a twisting type injury. With regard to his examination of the claimant's right knee, Dr. Wolfe found evidence of effusion, crepitus, and pain.

Prior to this new slip and fall in February of 2004, no objective evidence of injury to the claimant's right knee was ever noted. Although the claimant complained of pain in her right knee on January 2, 2004, the only findings with regard to the right knee were of degenerative changes found in the January 27, 2004, x-rays. Swelling and crepitus were not noted until after

the claimant's slip and fall in February of 2004. Although the medical records reflect that the claimant reported this injury to her employer, the claimant did not pursue a new injury claim for this injury to her right knee. Even taking the hearsay evidence in the medical records as true, that the employer did not complete any paperwork on this new injury, the burden is still upon the claimant to file a claim and pursue her benefits. Clearly, the claimant did not file a claim for benefits related to this new injury.

In my opinion, the majority has erred in finding that the claimant's right knee injury is causally related to her compensable left knee injury. In order for the claimant to prove that she sustained a compensable consequence injury to her right knee resulting from her overuse of that knee after the compensable left knee injury, the claimant is still required to prove all the elements of a compensable injury related to her right knee. In this regard, there are no objective medical findings of an injury to the right knee prior to the claimant's second injury in February of 2004. The degenerative changes found in the January 27, 2004, x-ray which Dr. Wolfe described as significant degenerative changes with near complete loss

of medial joint space clearly pre-existed the claimant's December 9, 2003, injury. Although Dr. Wolfe noted the presence of objective findings of swelling and crepitus in his February 26, 2004, examination, I cannot find that these findings are related to the overuse of the claimant's right knee from the left knee injury and not from the slip and fall incident in which the claimant twisted her right knee and heard a popping sound. The medical records patently reveal that while the claimant made minor complaints of right knee pain in January of 2004, it was not until after the incident in February of 2004, that the claimant began to complain that her right knee was actually bothering her more than the left. Accordingly, I cannot find that the claimant has proven by a preponderance of the evidence that she sustained a compensable consequence injury to her right knee as a result of her compensable left knee injury. On the contrary, the medical evidence supports a finding of a new injury to the right knee in February of 2004, which is unrelated to the compensable left knee injury. Therefore, I must respectfully dissent from the majority opinion.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. McKINNEY, Commissioner