

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609461

PENNY MEYER, EMPLOYEE	CLAIMANT
RANSTAD NORTH AMERICA, EMPLOYER	RESPONDENT
ESIS, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 15, 2007

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

Claimant represented by the HONORABLE MICHAEL HAMBY, Attorney at Law, Greenwood, Arkansas.

Respondents represented by the HONORABLE TOM HARPER, JR., Attorney at Law, Fort Smith, 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 22, 2007. 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 July 11, 2006, the relationship of employee-employer-carrier existed between the parties.
3. The claimant is entitled to a weekly compensation rate of \$188.00 for

temporary total disability and \$154.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury while working for the respondent on or about July 11, 2006.
5. The claimant did not appropriately report a work related injury until August 21, 2006.
6. The respondents should pay for all reasonable and necessary medical care for this claimant's compensable left knee injury subsequent to August 21, 2006.

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 22, 2007, 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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable left knee injury for which she is entitled to medical and indemnity benefits. Based upon my de novo review of the entire record, without giving either party the benefit of the doubt, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury. Therefore, I find that the decision of the Administrative Law Judge should be reversed.

Claimant contends that she sustained an injury on or about July 11, 2006, as she was lifting cases of Kahlua and felt a burning pain in her left knee. Conversely, respondents contend that the claimant did not sustain a compensable injury on July 11, 2006, or at any other time while employed by respondent employer and that the claimant did not report an injury until August 22, 2006. I agree with respondents

The claimant testified that on Tuesday, July 11, 2006, as she was lifting boxes of Kahlua she "felt the knee - - the pain in the knee (pointing on left knee) and it kind of like burned, but I just assumed it was a muscle, so I didn't say anything, you know." When her co-worker suggested that she report an injury, the

claimant testified that she said, "'I don't really want to do that. It's no big deal.'" Despite her knee being "angry" the next day, the claimant testified that she went to work anyway and worked her entire shift. Claimant contends that as she left work that day, she told Cindy that she had a pulled muscle. Claimant testified that by the end of the week her knee was not any better and she tried to get in to see her family physician, but he was not in the office. The claimant saw, his partner instead and was diagnosed with a pulled muscle.

The medical records reveal that the claimant was examined by Dr. Rodney McDonald on July 18, 2006. Claimant's chief complaint at that time was recorded by the nurse as "Lt knee hurting X 1 wk - ø injury." Likewise, under the doctor's notes, Dr. McDonald recorded, "÷ wk h/o [left] knee pain no injury but some t'd lifting at work. Pain is daily, constant & worse weight bearing on extension." Dr. McDonald also recorded a history of other complaints such as a recent urinary tract infection. Dr. McDonald assessed the claimant with left knee pain for which he prescribed pain medication and rest. Dr. McDonald also recommended physical therapy for the claimant if she did not receive any improvement.

On August 2, 2006, the claimant returned to the clinic and was seen by Dr. Aaron White, her regular family physician. The claimant advised Dr. White that she had rested her knee for two days and took the Naproxen, but had not noted any significant improvement. Dr. White ordered x-rays of the claimant's left knee which revealed mild narrowing of the three compartments of the knee joint. Dr. White ordered an MRI which was conducted on August 9, 2006. This diagnostic test revealed:

1. Question of a small tear in the posterior horn of the medial meniscus
2. Severe bone bruise noted involving the medial femoral condyle with osteoarthritic changes at the medial compartment of the knee joint noted.

On August 21, 2006, the claimant reported a work related injury. The claimant was then referred to Dr. Terry Clark with the Cooper Clinic. Dr. Clark examined the claimant on August 21, 2006, at which time she reported an injury date of August 1, 2006. The claimant provided Dr. Clark with a history of developing pain in her knee as she was carrying boxes and twisting at the same time. After examining the claimant's MRI and physically examining the claimant, Dr. Clark concluded that the claimant had a "left knee strain, torn left medial meniscus, bone bruise and medial femoral

condyle." The claimant was released to restricted duty and an appointment was scheduled with an orthopedic specialist.

Upon referral by Dr. Clark, the claimant was examined by Dr. Robert Debout in the Orthopedics department at Cooper Clinic on August 30, 2006. At the time of this examination, the claimant advised Dr. Debout that she was injured in July right after the 4th of July holiday when she was lifting and twisting at work. Dr. Debout reviewed resent X-rays which showed some mild degenerative loss of joint spacing. In addition, Dr. Debout reviewed the MRI noting, "She had an MRI done, which looks like she has a tear of the medial meniscus of this knee, which is consistent with her symptoms." Dr. Debout did not comment on the deep bone bruise depicted on the MRI.

The Accident Injury Report forms reveal that the claimant did not report a work related injury until after she was received the results of the MRI and advised that she would more than likely require surgery. Cindy Woods, who works for the respondent employer in health services, testified that the claimant did not formally report an injury until August 21, 2006. Ms. Woods further testified that when the claimant first reported an injury, the claimant only advised that it

occurred "a couple of weeks back" so she is the person who provided the injury date of August 1, 2006, when the claimant first sought treatment at Cooper Clinic. With regard to questioning about whether the claimant had reported a work related injury earlier in passing, Ms. Woods testified that if the claimant had mentioned a work related injury to her, she would have pulled the claimant aside and completed the necessary paper work at that time.

The burden of proof rests upon the claimant to prove the compensability of her claim. Ringier America v. Comles, 41 Ark. App. 47, 849 S.W.2d 1 (1993). There is no presumption that a claim is compensable, that the claimant's injury is job-related or that a claimant is entitled to benefits. Crouch Funeral Home v. Crouch, 262 Ark. App. 417, 557 S.W.2d 392 (1977); O.K. Processing, Inc. v. Servold, 265 Ark. 352, 578 S.W.2d 224 (1979). The party having the burden of proof on the issue must establish it by a preponderance of the evidence. Ark. Code Ann. § 11-9-704(c) (2) (Repl. 1996). In determining whether a claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavanaugh's,

298 Ark. 363, 768 S.W.2d 521 (1989); and Fowler v. McHenry, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

The claimant's injury occurred after July 1, 1993, thus, this claim is governed by the provisions of Act 796 of 1993. The Full Commission has held that in order to establish compensability of an injury, a claimant must satisfy all the requirements set forth in Ark. Code Ann. § 11-9-102 as amended by Act 796. Jerry D. Reed v. ConAgra Frozen Foods, Full Commission Opinion filed Feb. 2, 1995 (E317744). When a claimant alleges that she sustained an injury as a result of a specific incident, identifiable by time and place of occurrence, she 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). She 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, she fails to establish the compensability of the claim, and compensation must be denied. Jerry D. Reed, supra.

Objective medical evidence while necessary to establish the existence and extent of an injury, is not essential to establish a causal relationship between the injury and the work related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). Except in the most obvious cases, the existence of a causal relationship may require the assistance of expert medical evidence. John Cotton v. Ball & Prier, Full Commission Opinion, September 23, 1997, (E512437); Billy Wayne Jeeter v. B & R McGinty Mechanical Company, Full Commission Opinion, March 6, 1997, (E208256), affirmed May 6, 1998; Ortho O. Wells v. Armstrong Rubber Company, Full Commission Opinion, April 14, 1997, (D100998); and Carolyn Jackson v. Bosley Construction, Inc., Full Commission Opinion, March 6, 1997, (E009401). Nevertheless, a preponderance of other non-medical

evidence is sufficient to establish a causal relation to a work-related incident. Wal-Mart Stores, Inc. v. VanWagner, supra.

In the present claim the medical evidence establishes the existence of a medial meniscus tear as well as a "severe bone bruise noted involving the medial femoral condyle with osteoarthritic changes at the medial compartment of the knee joint." While expert medical evidence is presented stating that the medial meniscus tear is "consistent with her symptoms" no evidence is presented which causally relates the claimant's work related activity of lifting and twisting to either of these findings. Conceivably, one may sustain a medial meniscus tear from lifting and twisting as described by the claimant. However, there has been no evidence presented to account for the "severe bone bruise" on the medial femoral condyle or the "osteoarthritic changes at the medial compartment." While common sense and the claimant's age may explain the "osteoarthritic changes," the claimant offered no testimony to explain the presence of the "severe bone bruise."

My review of the medical records casts doubt upon the claimant's testimony regarding the onset of her left knee pain. When the claimant was first examined by

Dr. McDonald on July 18th, the claimant twice denied that her pain was related to an injury. The claimant did not at any time until after receiving the results of her MRI recall that she "injured" herself when lifting and twisting at work. At best, the claimant only advised Dr. McDonald that she had been lifting more at work. She did not describe experiencing the onset of pain or of burning in her knee while lifting and twisting when she sought treatment from either Dr. McDonald or Dr. White.

Moreover, the claimant admitted that she was aware of the company policy to report all work related injuries immediately, yet she did not report an injury until August 21, 2006, more than a month after the alleged incident. Nor did the claimant call her co-worker whom allegedly witnessed the claimant's injury to corroborate her testimony.

The claimant's account of her injury only involved lifting and twisting, it did not involved any type of direct blow to her knee. However, the objective medical findings clearly reveal a "severe bone bruise" in addition to a medial meniscus tear. These two findings casts grave doubt over the claimant's testimony that she sustained a work related injury. The claimant's description of her alleged injury only accounts for the finding of a meniscus tear, it does not explain the

"severe bone bruise." Accordingly, in order to find that the claimant established a compensable injury by a preponderance of the credible evidence, one would have to simply ignore the "severe bone bruise" as the claimant cannot explain its presence. We are charged with weighing all the evidence of record. In this particular case, I find that some explanation is required with regard to the claimant's objective medical findings and her alleged injury from merely lifting and twisting. See Wal-Mart v. Van Wagner, supra. As I do not find the claimant's testimony, standing alone, sufficient to establish the existence of a compensable medial meniscus tear, without some form of explanation for the "severe bone bruise," I find that the claimant has failed to meet her burden of proof. Therefore, I find that the decision of the Administrative Law Judge must be reversed, and this claim for benefits denied and dismissed.

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

KAREN H. MCKINNEY, Commissioner