

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605695

TAMMY SADLER,
EMPLOYEE

CLAIMANT

NATIONAL HOME CENTERS, INC.,
EMPLOYER

RESPONDENT

AMERICAN HOME ASSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 25, 2007

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

Claimant represented by the HONORABLE PHILIP M. WILSON,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed March 9, 2007. The administrative law judge
found that the claimant proved she sustained a compensable
injury to her right knee, and that the claimant proved she
was entitled to reasonably necessary medical treatment and
temporary total disability compensation. After reviewing
the entire record *de novo*, the Full Commission affirms as
modified the opinion of the administrative law judge.

I. HISTORY

The record indicates that Tammy Sadler, age 41, began working for National Home Centers, Inc. in August 2003. The claimant testified that her work duties were delivering and installing refrigerators and other appliances.

Dr. David L. Gilliam, OrthoArkansas, saw the claimant on October 27, 2005: "This 39-year-old female is seen in consultation at the request of Dr. Sue Caruthers with the chief complaint of right ankle and hind foot pain. Two days ago she had an inversion injury to the right ankle and hind foot while exercising at Curves....Multiple x-rays brought with the patient, including AP, lateral and oblique views of the ankle and hind foot, show no obvious fracture or dislocation."

Dr. Gilliam assessed, "1. Bifurcate ligament sprain, right hind foot. 2. Lateral ligamentous sprain, right ankle." Dr. Gilliam treated the claimant conservatively and noted on December 1, 2005, "I do think her injuries are healing and symptoms are resolving....She can therefore return to full active work duty without restrictions."

The claimant testified that she had an accident at work on March 8, 2006: "I was taking down racks off the sales floor and putting them on carts and rolling them outside, to

be put up out in the warehouse; and I hit my knee on one of the carts - one of the posts that was on the cart....My knee swelled up, it got a bruise on it, and it hurt."

The claimant testified that she reported the accident to supervisory personnel. Bobby Smith, the claimant's supervisor, testified, "I had seen her limping, and asked her, you know, what was wrong, and she said she hit her knee on a rack up on the floor....She bumped it."

The claimant signed a Form AR-N, Employee's Notice Of Injury, on March 8, 2006. Above Date of Accident on the Form AR-N was written, "3/6 - 8/06." The cause of injury was as follows: "Bumped knee on railing (unintelligible) showroom floor."

The claimant testified that there was another incident on March 22, 2006 while delivering a refrigerator with a co-worker: "We had took the refrigerator and pulled it up the steps, put it in the apartment. I took the door off to change the hinges, and when I squatted down to undo the bolts on the bottom to take the door off, my knee popped really loud and it started hurting."

The claimant testified that she notified supervisory personnel of the March 22, 2006 incident.

The respondents' attorney questioned Mark Sunderland, operations manager for the respondent-employer:

Q. And according to the medical records, that is March 23rd of 2006. What transpired? What did she say when she came and asked to go get medical treatment at that time?

A. She did come to me, and if I recollect properly, Janis Hurst and myself, that she needed medical treatment, that her knee was bothering her. And at that time, I asked Janis to set her up an appointment up at Concentra, and also arranged for a urinalysis test, which is common practice on a workmen's comp. And Janis made the necessary phone calls.

Q. Okay. During this conversation, did she, at any point in time, indicate to you that she was moving a refrigerator or assisting with it, squatted down and it popped?

A. I was not aware of that.

Q. Any popping incident at all during this conversation?

A. No, ma'am.

The claimant testified that she was sent to Concentra. The record indicates that the claimant was seen at Concentra Medical Centers on March 23, 2006. The Transcription indicated an Injury Date of March 6, 2006 and the Diagnosis was "924.11 Contusion of Knee." The notes from Jerry Daniel, PT included the following: "Patient is a 40 year old male employee of National Home Center/Landers Rd who reports that his leg was injured on 3/6/2006....Patient states, 'I

was putting up stock and bumped my right knee on a pallet.'" The Objective section of the Transcription indicated, "Palpation of the affected area reveals mild tenderness with soft tissue assessment."

Dr. Cynthia Almond reported on March 23, 2006:

On 3-06-06, pt was putting up stock and bumped her Rt knee. She states that she bumped the same 3 days in a row. Has had continued pain and swelling especially with walking and squatting/kneeling. No previous Rt knee injury or trauma. The pain is located on peripatellar aspects of Rt knee....

The knee joint is stable. Knee shows no deformity. Negative drawer sign. No ecchymosis. No giving way no locking no popliteal fossa swelling. Circumference of both knees measured midpatella: Rt knee 42.0 cm, Lt knee 40.0 cm. No discoloration. Generalized 2+ swelling anterior and peripatellar inh locartion (sic)....

The diagnosis was "Contusion of Knee" and the claimant was assigned modified activity.

The record indicates that the claimant began a course of physical therapy, and the claimant testified that she continued to work for the respondent-employer.

A report from Advanced Toxicology Network dated March 24, 2006 indicated that the claimant tested negative for THC (Cannibinoids), Amphetamines, Cocaine Metabolites, Opiates, and Phencyclidine.

Dr. Almond noted on March 27, 2006 that the swelling in the claimant's right knee had decreased.

Dr. Almond reported on April 10, 2006, "MRI Rt knee: Nondisplaced oblique flap tear of the posterior one-half of the medial meniscus. (see report). Will cont mod duty, HEP/PT, and make Ortho referral for further eval and treatment."

The testimony of James Wing, assistant operations manager for the respondent-employer, indicated that the respondents had knowledge of the alleged refrigerator incident "Only after we questioned her about her injury....it was after she had an MRI." The claimant's attorney cross-examined Mr. Wing:

Q. And at some point in time you asked her, because you were curious, said, "I don't understand how that bump could have caused that," and she said, "Well, I was lifting a refrigerator and it popped one day, too." Isn't that right?

A. That's correct.

Mark Sunderland testified, "Basically, and Jim Wing is the one that initiated the conversation, we were in there talking, and we asked about it, and that's when something was brought up to the fact when a popping noise or tear or whatever, I don't remember the exact terminology Ms. Sadler used at the time, but when we were led to believe there was

another incident, maybe had been another incident involved....it just didn't ring true."

Bobby Smith, the claimant's immediate supervisor, also testified that the claimant never reported a "popping or twisting" incident to him.

Dr. Tad C. Pruitt, OrthoArkansas, saw the claimant on April 12, 2006:

Ms. Sadler is a 40-year-old female who works in shipping and receiving at National Home Center referred by Dr. Cynthia Almond from Concentra for treatment of a medial meniscal tear she sustained while at work on 03/06/06. She reports striking her knee on a metal bar at the medial side. Several days later she was working at an installation job when she squatted down and experienced a painful pop in the knee and had swelling the following the (sic) day. Since the injuries, she has had popping and catching as well as pain along the medial side of the knee despite taking Ultram and using a Neoprene knee sleeve. She has been able to work but is experiencing significant discomfort. MRI was obtained and showed a medial meniscal tear. She was referred to us for definitive treatment....

The right knee has a +1 effusion, positive medial joint line tenderness, and a painful McMurray's. No instability.

Imaging Studies:

X-rays of the right knee are normal.

MRI done on 04/07/06 reveals a nondisplaced oblique flap tear involving the posterior one-half of the medial meniscus.

Dr. Pruitt assessed "Right knee medial meniscal tear" and stated, "This requires arthroscopic medial meniscectomy. To the extent that her pain and discomfort is caused by the meniscus, the surgery will be helpful. The MRI also suggests she has some arthritic changes tricompartmentally. This is a pre-existing condition which may cause her continued pain and discomfort long-term after the surgery. Prior to the surgery, we'll keep her on a light duty status. After surgery, she'll be off work until her first postop visit. I suspect she'll be on light duty for 6-8 weeks after the surgery and hopefully returning to full duty by the 8th week."

Another orthopaedic specialist, Dr. Charles E. Pearce, Jr., evaluated the claimant on May 16, 2006 for right knee pain:

Ms. Sadler is a 40-year old employee of National Home Center who, while gainfully employed on 3/8/06, struck her knee initially on a metal rack. She says that her leg swelled but eventually resolved. By the next week, she bent while working and then stood up. She had a pop and has had pain in her knee since. She has never had prior problems with her knee in the past.

This led to a MRI scan. This clearly shows a medial meniscal tear....

It is my opinion that the second of her injury (that is, the squatting and then standing with an associated pop) could be related to tearing of her meniscus and

would be consistent with a mechanism of injury for that type of problem....

The claimant testified on direct examination:

Q. And when is the last date that you actually worked for National Home Center?

A. June 19th.

Q. Okay. Tell us what happened on that day.

A. I went to work that day; I was on light duty; and after lunch, Janis Hurst called me to her office, and then we went to Wes Coffee's office.

Q. Okay. Who is Wes Coffee?

A. Wes Coffee is the general manager of National Home Center.

Q. Okay. And what happened then?

A. They told me that because my injury was a non-compensable injury, that they couldn't keep me on light duty anymore, and that I had to go home.

Q. Did they explain to you why they said that?

A. Just because that the workmen's compensation said that it was not a compensable injury.

The record indicates that the claimant applied for unemployment insurance benefits on June 19, 2006. "I had to have some money," the claimant testified.

A pre-hearing order was filed on September 6, 2006. The claimant contended that "on or about March 8, 2006, she sustained a compensable injury to her knee for which she should be awarded benefits, currently including reasonably

necessary medical and related expenses and temporary total disability for a period of ten days. An attorney's fee for controversion was also requested, while other possible issues were reserved." The respondents contended that there had been "no event at work which resulted in a compensable injury to the claimant's knee."

The pre-hearing order indicated that the issue was "Compensability."

Dr. Pruitt wrote to the claimant's attorney on October 16, 2006:

I received your letter regarding Tammy Sadler and the causation of her meniscal tear.

Ms. Sadler reported two injuries to me. The first occurred when a metal bar struck her medial knee. The second occurred when she squatted down and experienced a painful pop in the knee with swelling.

It is that last maneuver that is a classic description of a meniscal tear producing injury that did occur at work.

Therefore, in my opinion, within a reasonable degree of medical certainty, her work related injury is the major cause of her meniscal tear, greater than 50% of the cause.

A hearing was held on December 12, 2006. Counsel for the claimant contended at that time that there were two incidents, "one on the 8th of March and one on or about the 22nd of March." The claimant contended that she was

entitled to temporary total disability beginning June 19, 2006. The respondents contended that there "was only a first incident, that being on March the 8th of 2006, and the facts and the documentation is not going to support a second incident. The respondents also assert the medicals don't support entitlement to TTD in the event compensability is found."

The claimant testified that she was waiting to undergo surgery.

The respondents' attorney cross-examined the claimant:

Q. How long did you draw unemployment benefits?

A. Until a month ago.

Q. Date, give me a date.

A. Around, it was, I believe, November the 13th.

Q. And since you started drawing unemployment benefits, you've been actively looking for a job. Is that correct?

A. Yes, ma'am.

Q. Have you found a job?

A. I have now.

Q. Where are you working?

A. Home Depot.

Q. How long have you been there?

A. Since November - the middle of November - right around the 13th....

Q. How many hours are you working a week?

A. 40.

The administrative law judge found, in pertinent part:

3. The preponderance of the evidence shows that the claimant suffered a compensable injury to her right knee on or about March 22, 2006, for which she is entitled to benefits, including reasonably necessary medical and related expenses previously incurred.

4. The claimant's injury is a scheduled injury and she is entitled to temporary total disability benefits during the healing period until she returns to work, for a period beginning June 19, 2006, and continuing until a date to be determined.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(i) An 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). "Objective findings" are those findings

which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The administrative law judge found in the present matter, "The preponderance of evidence shows that the claimant suffered a compensable injury to her right knee on or about March 22, 2006, for which she is entitled to benefits, including reasonably necessary medical and related expenses previously incurred." The Full Commission affirms this finding.

The claimant testified that she had been working for the respondents for about two and one-half years when an accident occurred. The claimant testified that she bumped her knee at work on March 8, 2006. A Form AR-N filed the same date corroborates the claimant's testimony. The claimant's immediate supervisor also corroborated the claimant's testimony. The claimant testified there was another work-related incident on March 22, 2006, that her knee popped after squatting. Although the claimant did not

file a Form AR-N for the March 22, 2006 specific incident, the respondent-employer sent the claimant to Concentra for treatment on March 23, 2006. The physical therapist and Dr. Almond at Concentra were told by the claimant only about the "bump" on March 6, not the "pop" on March 22. Dr. Almond did note, however, that the claimant's knee hurt with squatting and kneeling. In addition, Dr. Almond clearly noted swelling in the claimant's right knee, of course an objective medical finding. Dr. Almond diagnosed a knee contusion.

On April 10, 2006, Dr. Almond interpreted an MRI and stated that the claimant had a flap tear in her right knee. The testimony indicated that at this point the claimant finally told James Wing and Mark Sunderland about the work-related "pop" on March 22, 2006. The subsequent history recorded by Dr. Pruitt corroborated the claimant's testimony. Dr. Pruitt noted that there had been two workplace accidents, first a bump and then a pop after squatting. Dr. Pruitt credibly opined that the claimant had sustained a work-related meniscal tear.

The Full Commission affirms the administrative law judge's finding that the claimant sustained a compensable injury to her right knee on or about March 22, 2006. The

preponderance of evidence demonstrates that the claimant sustained an accidental injury on March 22, 2006, and that the accidental injury caused physical harm to the claimant's knee and arose out of and in the course of employment. The injury required medical services and resulted in disability. The accidental injury was caused by a specific incident and was identifiable by time and place of occurrence. The claimant established a compensable injury by medical evidence supported by objective findings. The objective findings included swelling noted by Dr. Almond and the oblique flap tear noted by Dr. Almond and Dr. Pruitt.

B. Temporary Disability

An employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability compensation during her healing period or until she returns to work, whichever occurs first. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The administrative law judge found in the present matter that the claimant was entitled to temporary total disability beginning June 19, 2006 and continuing until a date to be determined. The Full Commission finds that the claimant proved she was entitled to temporary total disability from June 19, 2006 until November 13, 2006. The claimant

testified that her employment was terminated on June 19, 2006. Since the record indicates that the claimant remained within a healing period for her compensable injury at that time, the claimant proved that she was entitled to temporary total disability compensation beginning June 19, 2006. The claimant testified that she returned to full-time employment for another employer beginning November 13, 2006. The claimant is not entitled to temporary total disability after she returns to work. *Armstrong, supra*. The claimant therefore proved she was entitled to temporary total disability compensation from June 19, 2006 until November 13, 2006. Temporary total disability is payable to the claimant to the extent her temporary total disability compensation exceeds unemployment benefits the claimant received. Ark. Code Ann. §11-9-506.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claimant proved she sustained a compensable injury, for which the claimant is entitled to reasonably necessary medical treatment and temporary total disability compensation. The Full Commission finds that the claimant proved she sustained a compensable injury on or about March 22, 2006. We find that all of the medical treatment of

record provided the claimant, including the treatment and recommendations of Dr. Pruitt, were reasonably necessary pursuant to Ark. Code Ann. §11-9-508(a). The Full Commission finds that the claimant proved she was entitled to temporary total disability compensation from June 19, 2006 until November 13, 2006.

The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.