

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F711169

ORBY ROGERS

CLAIMANT

B & K ELECTRICAL/MECHANICAL,
EMPLOYER

RESPONDENT

UNION INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 17, 2008

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

Claimant represented by the HONORABLE THOMAS W. MICKEL,
Attorney at Law, Conway, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondents appeal from a decision of the
Administrative Law Judge finding that the claimant sustained
a compensable left knee injury in addition to his admittedly
compensable medical only back injury on September 6, 2007.
Based upon our de novo review of the entire record, without
giving the benefit of the doubt to either party, we find
that the claimant has failed to meet his burden of proof.
Therefore, we find that the decision of the Administrative
Law Judge must be, and hereby is, reversed.

The claimant sustained an admittedly compensable injury to his back on September 6, 2007, when he fell through a hole in the floor during the course and scope of his employment. At the time of his back injury, the claimant was employed by respondent-employer as a foreman on an electrical job. After his injury, the claimant went to the emergency room at St. Vincent's Hospital for an evaluation and x-rays. An x-ray of the left knee revealed:

There is irregularity of the anterior aspect of the patella, which appears well corticated and may represent a chronic fracture. No acute fractures are visualized. There is no joint effusion. The joint space is normally maintained.

The claimant was released from the emergency room in stable condition with a diagnosis of "Contusion, Soft Tissue; Knee Sprain; Vicodin" and was advised to follow-up with his family physician.

The claimant presented to his family doctor, Dr. Richard Finch, on September 10, 2008. After reporting a fall the past Thursday, the claimant's chief medical complaint was that it hurt him to laugh or to cough after the fall. Dr. Finch specifically recorded the following symptoms:

Fell 6-7 feet & landed on trash can.
Landed R post. ribs. Hurts @ ribs. Knee
better since fall. Got Vicodin from ER,
but made him sick.

Dr. Finch doubted that the claimant had a rib fracture, but treated the claimant and advised him to return in three days if no improvement. The claimant did not return for addition treatment until October 12, 2008, over one month since he was released by Dr. Finch. At that time the claimant was no longer complaining of chest or rib pain, but rather that his left knee hurt to walk or bear weight on. Dr. Finch did not note the presence of any objective findings, but referred the claimant for an orthopaedic evaluation. At first, Dr. Finch's office attempted to schedule an appointment with Dr. Christopher Young, but was unable to secure an appointment until November, so the claimant advised them to schedule an appointment with another orthopaedist. The claimant was examined by Dr. Troy Birk, a Hot Springs Orthopaedist, on October 18, 2007. The claimant provided Dr. Birk with a history of pain and swelling in his left knee but no locking or giving away. Upon examination, Dr. Birk noted the following:

Height is 6 foot 1 inch, weight 218
pounds. On examination, he was a

pleasant gentleman in no obvious distress. The patient is answering questions well. On examination of his left knee, reveals a normal appearing knee. He has motion from about zero to 130 degrees. He does have pain at the extreme. He has positive medial joint line tenderness. No significant lateral joint line tenderness. He has an Lachman, negative anterior/posterior drawer. No opening to varus-valgus stresses at 0 or at 30 degrees. He has trace effusion in the knee. He has light touch intact distally. No other significant findings. His x-rays are essentially normal. He has mild degenerative changes, but no significant arthritis. Certainly this would be worrisome for a medial meniscus tear. We are going to try and get him set up for an MRI and see him back afterwards.

The MRI performed on October 29, 2007, was read by the radiologist to revealed:

A bakers cyst is seen posteriorly. It is fairly large. No knee effusion is present. The articular cartilages are grossly normal. The anterior and posterior cruciate ligaments are intact. There is mild thinning of the lateral meniscus. No meniscal tears are detected. The medial and lateral collateral ligaments are intact.

The claimant followed up with Dr. Birk on November 5, 2007, and was presented with options to inject the knee, and to aspirate the cyst versus doing nothing but

continuing to watch the cyst. The carrier controverted the claimant's left knee injury at this time. Claimant sought a second opinion regarding his knee from Dr. Christopher Young. Dr. Young's office notes were not introduced into evidence. Dr. Young performed a left knee arthroscopy with chondroplasty of the medial femoral condyle on December 11, 2007. In his operative report, Dr. Young noted: "It was obvious he had an osteochondral defect of the medial femoral condyle."

In correspondence addressed to the respondents' attorney Dr. Birk opined that the claimant's thinning and Baker's cyst were indeed probably pre-existing conditions. He further opined that anyone falling from a height like the claimant would be expected to have pain and potential problems with their knee, "although I do think that this Baker's cyst and thinning of the lateral meniscus are not products of the fall itself."

The claimant has the burden of proving by a preponderance of the evidence the compensability of his claim. Jordan v. Tyson Foods, 51 Ark. App. 100, 911 S.W.2d 593 (1995); Kuhn v. Majestic Hotel, 50 Ark. App. 23, 899 S.W.2d 845 (1995). For the claimant to establish a

compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (Supp. 2005), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. See also, Ark. Code Ann. §11-9-102(4) (E) (i) (Supp. 2005); Freeman v. ConAgra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001); Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997), see also, Reed v.

ConAgra Frozen Foods, Full Commission Opinion, February 2, 1995 (Claim No. E317744). 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).

In the present matter, the Administrative Law Judge found that the claimant sustained a compensable left knee injury on September 7, 2007, when he fell in the course and scope of his employment. The Full Commission reverses this finding. The claimant did not demonstrate a compensable injury which arose out of the course of his employment which is established by medical evidence supported by objective findings. We recognize that Dr. Young stated that "it was obvious he had an osteochondral defect of the medial femoral condyle." However, this assessment fails to explain whether the finding of osteochondral defect resulted from the claimant's fall. Dr. Young does not opine, nor does the evidence demonstrate that the claimant sustained any osteochondral defects as a result of his accidental injury of September 6, 2008. The only evidence in the record which addresses causation is the opinion of Dr. Troy Birk. Dr. Birk specifically opined that the MRI findings of a

Baker's cyst and thinning of the lateral meniscus were not caused by the claimant's fall. We specifically find that the Baker's cyst, thinning of the lateral meniscus and the osteochondral defect are degenerative conditions. The evidence fails to support a finding that these degenerative conditions were the result of a fall. We further note that in his physical examination of the claimant on October 18, 2007, Dr. Birk noted the presence of trace effusion, but during the MRI performed on October 29, 2007, the radiologist specifically found "No knee effusion is present." The evidence does not demonstrate that the claimant sustained any swelling of his left knee as a result of his September 6, 2007, fall. The claimant's main complaint when he presented to the emergency room was the suspicion of a broken rib. When the claimant presented to his family doctor four days later, he advised that his knee pain from the fall had improved. The claimant did not seek any additional medical treatment for over month, although he was advised to follow-up in three days if he did not see any improvement. Moreover, the claimant continued to work during this time frame. Accordingly, we find that Dr. Birk's observation of "trace effusion" on October 18, 2007, is

entitled to little weight. Any effusion was no longer present when the MRI was performed and there is no credible evidence that the claimant's fall resulted in any swelling of the claimant's left knee as none was noted in the emergency room on the day of the fall, nor was any effusion noted by the claimant's family physician on September 10, 2008, when he sought medical treatment for his injuries and advised that his knee was improving.

Based on our de novo review of the entire record, we find that the claimant did not establish a compensable injury by medical evidence supported by objective findings. Therefore, the decision of the Administrative Law Judge is reversed and this claim for benefits denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. The majority, reversing the Administrative Law

Judge, finds that the claimant "failed to meet his burden of proof." I disagree. After a de novo review of the record, I find, as did the Administrative Law Judge, that the claimant has proved by a preponderance of the evidence that he sustained a compensable left knee injury in addition to his admittedly compensable "medical only" back injury on September 6, 2007.

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v.

Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

I find that the claimant has proven by a preponderance of the evidence that he sustained a compensable left knee injury when he fell 10 feet down a shaft while in the course and scope of his employment. The claimant was a credible witness who described the fall itself and his treatment following the incident. The contemporaneous medical records support the claimant's contention that he was complaining of left knee pain immediately following the fall. Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). Here, the claimant's credible testimony has clearly established the causal connection between the fall and his knee injury.

I find that the majority has, once again, confused the element of objective findings with the element of causation. While objective medical evidence is necessary to establish the existence and extent of an injury, it is not essential to establish the causal relationship between the injury and the work-related accident. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522, 524 (1999); Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.3d 375 (2002). Contrary to the majority's conclusion, the claimant has met both the elements of objective findings and causal connection.

The majority states that it has relied on Dr. Troy Birk's opinion that the claimant's objective findings of a Baker cyst and thinning of the lateral meniscus were "unrelated" to the claimant's fall to find that the claimant has failed to prove a compensable injury. However, I would note that regarding the claimant's actual injury, not limited to the Baker cyst, Dr. Birk actually opined that the fall did injure the claimant's knee, stating: "Certainly the fall did injure Mr. Rogers knee."

For the aforementioned reasons I must respectfully
dissent.

PHILIP A. HOOD, Commissioner