

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512518

JUAN RUBIO,
EMPLOYEE

CLAIMANT

D.J. WEBER CONCRETE CONSTRUCTION,
EMPLOYER

RESPONDENT

GUARANTEE INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JUNE 16, 2008

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals and Respondent cross-appeals an
opinion and order of the Administrative Law Judge filed
May 1, 2007. In said order, the Administrative Law
Judge made the following findings of fact and
conclusions of law:

1. The prior opinion of November 8, 2006 is final.
2. Claimant has proven by a preponderance of the
evidence that he is entitled to additional medical
treatment for his compensable low back injury.
This includes medical treatment from Dr. Routsong
and Dr. Lou.

3. Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury to his knee.

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 of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

The claimant alleges that he sustained a compensable knee injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged knee injury is, indeed, an injury covered by the Act; however, the claimant has failed to establish the elements necessary to prove the compensable knee injury by a preponderance of the evidence.

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).

Therefore we affirm and adopt the May 1, 2007 decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I concur, in part, and dissent, in part from the majority opinion. I agree that the claimant is entitled to continuing medical treatment for his compensable back injury. I dissent from the majority's finding that the claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury to his knee.

The opinion of the Administrative Law Judge was affirmed and adopted in its entirety by the majority without additional discussion. Therefore, the opinion of the Administrative Law Judge and all of his findings and conclusions are now the majority opinion.

The Administrative Law Judge determined that the claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury to his knee as a result of the accident which occurred on November 8, 2005. The Administrative Law Judge based his denial on the assertion that the claimant did not know exactly how being hit with the bucket of a backhoe could have injured his knee and because initial medical reports do not contain a history of knee complaints. The two problems identified by the Administrative Law Judge in this case are both a matter of communication. The first is the claimant's failure to communicate with the Administrative Law Judge in describing the mechanics of his injury. The second, is a failure of the claimant to communicate the existence of a knee injury to his doctors. On the issue of communication, it should be emphasized that the claimant speaks only Spanish. He required an interpreter at the hearing and his girl friend interpreted during doctors visits. And she

speaks very little Spanish. Therefore, it is only fair to afford the claimant some latitude in matters of communication and not to judge him too harshly for deficiencies in this area.

The Administrative Law Judge said that the claimant could not accurately describe how being hit with the bucket of a backhoe would have resulted in a knee injury. Because the claimant was not struck in the knee, did not fall, or twist his leg, the Administrative Law Judge could not understand how an injury to the knee could have occurred. Obviously, this type of significant trauma could have caused an injury to any part of the body. And it happened so fast that the claimant did not know the exact mechanism of injury. The claimant said "I don't know how it happened because it happened all so fast". There was no confusion, however, with the fact that the claimant began, immediately, to experience problems with his back, and every part of his left leg, from his hip to his ankle. And the medical evidence bears this out.

In the hospital, the day after his injury, the claimant complained of back pain and pain in the left leg from his hip to his feet. In an effort to pinpoint the problem, X-rays were taken of his back, hip, and

even his neck. The claimant's primary treating physician became Dr. D. Luke Knox, a neurosurgeon. Under the treatment of Dr. Knox, the claimant underwent a number of diagnostic procedures directed at discovering the cause of the leg pain. The claimant had a full body bone scan; two MRI's and a CT myelogram of the lumbar spine; nerve conduction and EMG studies of the left leg, and an MRI of the pelvis; all directed at the diagnosis of the back injury. These tests showed a herniated disk at L5-S1. However, there were no studies conducted on his left knee.

After all the diagnostic studies were performed, Dr. Knox expressed some degree of uncertainty in attributing all of the claimant's leg problems to the herniated disk and referred the claimant to a neurologist, Dr. Steven L. Moon, for a second opinion. Dr. Moon expressed the same reservations as to whether all of the left leg problems were related to the herniated disk. He noted that the claimant "complains prominently of pain localized around the left knee" and stated there had not been "any specific evaluation or imaging in those areas". For the first time, a doctor suspected that some of the claimant's problems might be orthopedic in nature. As a result, Dr. Moon referred

the claimant to Dr. Christopher A. Arnold, orthopedic surgeon.

It was not until the claimant was evaluated by an orthopedic surgeon, on June 22, 2006, that the true nature of the knee problems became known. Without the benefit of any additional diagnostic studies, Dr. Arnold examined the claimant and diagnosed a meniscus tear in the claimant's left knee. This diagnosis was objectively confirmed by an MRI of the left knee on June 22, 2006. Dr. Arnold performed surgery on the claimant's knee on August 18, 2006. The claimant did well after the surgery and Dr. Arnold released him to return to work on September 21, 2006.

There is no evidence of record indicating that the claimant had any preexisting knee problems or sustained any injury or insult of any kind to his knee after November 8, 2005.

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is no other reasonable explanation for the injury. If the

claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, it may be said without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962); Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958).

The evidence of record establishes the requisite causal connection between the claimant's left knee condition and the accident occurring on November 8, 2005. From the beginning, it was assumed that all of the pain down the claimant's left leg was due to a nerve involvement in the lumbar spine. The radicular pain emanating from the back, which extended the entire length of the claimant's left leg, masked the pain from the knee injury. In accord with his speciality, the neurosurgeon concentrated on the nerve problem from the herniated disk. While Dr. Knox was certainly an appropriate specialist for the treatment of the nerve damage from the back injury, the lack of an orthopedic evaluation obviously delayed the diagnosis of the joint problem in the left knee. When the neurosurgeon suspected that there was more to the leg pain than the

herniated disk, tests were run on every part of the claimant's left leg, except his knee. When the claimant finally saw an orthopedic surgeon, the knee injury was immediately identified and confirmed with an MRI. While the previous doctors tested the claimant's back, neck, and hip, this was the first diagnostic test ever performed directly for the claimant's knee. The Administrative Law Judge denied this claim because the knee injury did not appear in the initial medical reports. Clearly, if the doctors did not know that part of the leg pain was due to a knee injury, how could the claimant be expected to know, and report, this fact?

And finally, the claimant's failure to accurately articulate the mechanics of his injury is completely understandable when the language barrier is considered and in light of the fact that the accident occurred so quickly that the claimant could not explain exactly how he was impacted by the event. Being hit with the bucket of a backhoe is the only logical explanation for the torn meniscus in the claimant's left knee. In fact, no other explanation and has been offered.

For the aforementioned reasons, I concur in the majority's award of medical benefits for the

compensable back injury but must respectfully dissent from the majority opinion denying compensability of the claimant's left knee injury.

PHILIP A. HOOD, Commissioner