

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F712785

GEORGE STANDRIDGE,
EMPLOYEE

CLAIMANT

TAYLOR GIN, INC.,
EMPLOYER

RESPONDENT

AG-COMP SIF CLAIMS,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 26, 2009

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

Claimant represented by the HONORABLE KENNETH A. HARPER,
Attorney at Law, Monticello, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed February 18, 2009. The administrative law
judge found that the claimant proved he sustained a
compensable injury, and that the claimant proved he was
entitled to temporary total disability benefits and surgical
treatment. After reviewing the entire record *de novo*, the
Full Commission reverses the administrative law judge's

opinion. We find that the claimant did not prove he sustained a compensable injury.

I. HISTORY

The record indicates that the claimant, age 68, began treating with Dr. Ruloff Turner, D.O., in September 2006 for "follow up on diabetes." Dr. Turner's diagnosis included diabetes, hypertension, and cervical disk protrusion.

The claimant testified that he drove a module truck for the respondent-employer. The parties stipulated that the employment relationship existed "on or about October, 2007, when the claimant alleges he sustained a compensable injury to his right knee."

The claimant testified on direct examination:

Q. You're here today, you're alleging that something happened on the job. Do you remember when it was that this event took place?

A. Sometime in October.

Q. Early October?

A. Early or - not - around the 15th, 16th, somewhere along in there, give or take a day or two....

Q. Do you know exactly what date on the calendar this event occurred?

A. Not exactly....

Q. Tell us what happened to you.

A. Well, I was getting back up in the truck and I felt a sting like in my knee. I didn't pay no attention to it, so I got in and sat down, went on about my work, and later on that day it kind of got a little - or, that night, rather, kind of got a little stiff on me. I didn't think nothing about it, and I said, "Well, I just sprung my knee." So the next morning I told Jody, I said, "I sprung my knee."

Q. Now Jody's your supervisor?

A. Yes.

Q. What was his response to your comment about your knee?

A. I said, "You got workmen comp" "Yeah, but they ain't going to pay nothing."

Q. That's what he told you?

A. That's what he told me....

According to the record, the claimant treated with Dr. Turner on October 15, 2007 for an abscess to the right thigh. Dr. Turner's notes did not mention a work-related accident. The claimant returned to Dr. Turner on October 17, 2007:

George is seen to get his wound repacked. He also has hurt his right knee. He doesn't know what he did. It started hurting this morning. He is examined....Extremities have good range of motion, reflexes, and pulses. His right leg wound is clean, with a small amount of necrotic tissue in the base of the wound. It is cleaned, repacked with Iodoform gauze.

Dr. Turner diagnosed "Right leg abscess."

Dr. Turner noted on October 22, 2007, "George is seen for his wound to be repacked. Also his right knee is not any better....His wound looks better today. No repacking is necessary." Dr. Turner diagnosed "Wound to the right leg, healing. Chronic right knee pain."

The claimant returned to Dr. Turner on October 29, 2007:

George is seen with his right knee still hurting. He wants a shot in it. He is examined....There is tenderness to palpation of the right medial aspect of the right knee, worse with distraction of turning leg laterally....X-rays are taken of the right knee. They show no acute injury. DIAGNOSIS: Right knee strain/sprain.

Dr. Turner noted on November 20, 2007, "The patient is seen with complaints that his right knee is still very painful. He states it hurts so bad at times he passes out....There is tenderness to palpation of the medial aspect of the right knee."

Dr. Charles A. Clark, an orthopaedist, examined the claimant on November 29, 2007:

Mr. Standridge is a very pleasant 69 y/o consultation request today from Dr. Turner for evaluation of his R knee. He had a hx of injury stepping up and down from a cab at work where he felt pain medially. He did not think too much of it until the next morning when it was tender. He could not straighten it up all the

way. There is no other hx of surgery or injury to the knee.

EXAM: He is tender over the medial joint line with a mildly positive McMurray. There is no varus/valgus instability. Negative anterior/posterior drawer. Negative Lachman. He has a mild effusion. He is neurologically intact, except for some decreased sensation in his feet in a stocking type distribution. He has good distal pulses and warm toes. He has no pain about the hip.

X-RAYS: Radiographs are essentially unremarkable. These do not show any fx or dislocation. He may have some early arthritis developing in the medial compartment....I have recommended we get an MRI of the R knee, but he has had previous stents placed in the heart and we cannot do this....

Dr. Clark planned an injection of the claimant's knee and diagnosed "Either a degenerative medial meniscus tear or frank medial meniscus tear, post-traumatic-R knee."

On or about December 3, 2007, the claimant signed a Form AR-N, Employee's Notice Of Injury. According to the Form AR-N, the Date of Accident was October 28, 2007 at 4 p.m. and the employer was Notified of Accident at 7 a.m. on October 29, 2007. The claimant discussed the cause of injury: "stepped down out of truck on the step & twisted knee."

Dr. Clark gave the following impression on December 4, 2007: "Findings are consistent with the medial meniscus tear

of the R knee....We cannot do an MRI to confirm this, therefore, I have recommended arthroscopic evaluation and treatment as indicated." Dr. Clark diagnosed "Medial meniscus tear of the R knee."

A representative of the respondent-carrier corresponded with a representative of the Commission via e-mail on December 12, 2007:

I would like to request an extension on the filing of the Form 2 for the above-mentioned claim. Our first notice of this claim was the physicians office calling us wanting to schedule him for surgery. This allegedly occurred 10/28/07 and our first notice was 12/3/07. We have requested records from the treating physician and have yet to receive those in order to determine compensability.

Dr. Clark's pre-operative diagnosis on December 13, 2007 was "Medial meniscus tear, right knee....Mr. Standridge is a 67-year-old gentleman with persistent mechanical symptoms and effusions of the right knee. MRI and physical examination both consistent with a marked medial meniscus." Dr. Clark performed the following surgical procedure: "1. Arthroscopy, right knee with partial lateral meniscectomy. 2. Lateral femoral condylar ablation arthroplasty. 3. Patella femoral chondroplasty and lateral release." The post-operative diagnosis was "1. Medial meniscus tear,

right knee, with grade IV ___ medial femoral condyle. 2. Grade III chondromalacia of the patella with lateral tracking."

The claimant followed up with Dr. Clark on December 28, 2007: "He is doing well. Pain control is excellent....I will see him back in 4 wks for reevaluation."

The claimant followed up with Dr. Clark on January 30, 2008:

His concerns center around his Workers' Compensation claims, which he says they said were preexisting. I have gone over his findings from surgery and I do not think there is much doubt that the arthritis in the knee was preexisting, as he had some Grade 4 changes on the femoral condyle, although they are in the area of a tear. The time frame from last fall to the time we did surgery would have been insufficient to have that degree of arthritis. The tear on the meniscus, however, was acute. It was a posterior split and it was hemorrhagic, and it was consistent with an acute tear....

Dr. Clark reported on February 5, 2008, "He notes today that he does have a lawyer who took his case and wants to know if he can have a statement indicating that he has been under my care. I certainly do not see any contraindications to this. I first saw George on November 29, 2007. He has a history of stepping down off a cab at work and had a sharp pain medially. The MRI confirmed the tear. Surgery also

confirmed the acute meniscus tear and what appeared to be an osteochondral defect of the medial femoral condyle. He underwent a partial meniscectomy and abrasion arthroplasty."

Dr. Turner wrote to the claimant's attorney on March 10, 2008:

Mr. Standridridge (sic) was seen in my office on 10/17/2008. He was scheduled for a recheck on a spider bite wound, During that visit we discussed his injury with his knee while stepping down from a truck. After that visit he was seen several times for the injury.

Dr. Clark noted on March 13, 2008, "By hx, he is not doing very well. He has persistent pain, cannot stand on his leg for long periods of time, and he does have an effusion today. The therapist basically indicates that he thought he had some anterior cruciate ligament laxity, as well." Dr. Clark's impression was "Developing worse posttraumatic arthritis, medial compartment."

Dr. Clark noted on March 31, 2008, "the option at this point in time with some Grade 4 changes of the medial femoral condyle, now developing subarticular cysts, and worsening osteoarthritis would be a unicondylar knee replacement. After discussing it with him at length, we are going to pursue this on April 7."

The claimant informed Debra Clark, PA-C, on May 28, 2008 that he was "not happy with the results of his knee. It is painful to him." Ms. Clark's impression was "S/P unicondylar arthroplasty R knee."

A pre-hearing order was filed on August 12, 2008. The claimant contended that he sustained a compensable injury to his right knee and was "entitled to medical benefits (past and future), temporary total disability, and permanent partial disability, and attorney's fees." The respondents contended that the claimant "failed and/or refused to timely report an injury at work; that the claimant's complaints did not occur within the course and scope of his employment or while he was performing employment services; and that the claimant's condition for which he requests benefits is an unrelated degenerative condition."

The parties agreed to litigate the following issues:

1. Compensability of claimant's alleged injury to his right knee on or about October, 2007.
2. If found compensable, claimant's entitlement to continued medical treatment and payment of past treatment; claimant's entitlement to temporary total disability from the date of the injury until the date of maximum medical improvement; upon the granting of an impairment rating, claimant's entitlement to permanent partial disability; and claimant's entitlement to an attorney's fee.

Dr. Clark reported on September 9, 2008:

I am going to obtain an FCE to determine his deficit as I have a letter here today from his attorney requesting a final evaluation and whether he has reached maximal medical improvement which I think he has....I do not anticipate a need for any future medical treatment at this stage. Based on the findings at the time of arthroscopy, he had preexisting arthritis in the knee, but the meniscus tear that he sustained on the job appeared acute. The area of arthritis was obviously a large osteochondral defect and also looked primarily posttraumatic. With respect to his requirement for a partial knee replacement, the injury was the major cause of his problems with the knee. The objective findings of the injury were those described at the time of surgery and arthroscopy and his persistent deficits are due to the objective findings of quadriceps atrophy. I will see him back here after the FCE is completed to dictate a final disability rating.

A hearing was held on November 20, 2008. The claimant's attorney questioned Jody Schulz, the claimant's supervisor at the time of the alleged accidental injury:

Q. Did Mr. Standridge come to you one day in 2007 and mention something about his knee bothering him?

A. He did.

Q. Did he mention that it had happened while he was driving a truck or working around - on a job?

A. I think he told me that he slipped and - off the step, yes, sir....

Q. Did you ever have a conversation with Mr. Standridge about difficult - difficulty, if any, of receiving benefits.

A. No....The only conversation we had about workers' compensation is that's who our insurance is, and that if he's going to go to the doctor, he needs to go to the office and fill out the proper forms.

Q. Do you recall - and you may not - Do you recall when Mr. Standridge had his first conversation with you about his knee?

A. As far as the date, no, I don't know.

Q. Was it - Do you recall the month?

A. Not particularly, no.

The respondents' attorney cross-examined Jody Schulz:

Q. Mr. Schulz, did you ever tell Mr. Standridge that workers' comp wasn't going to pay him nothing?

A. No, sir.

Q. Did you ever tell him that he wasn't entitled to workers' compensation?

A. No, sir.

Q. Did you ever tell him he couldn't file a workers' compensation claim?

A. No, sir.

Q. If he went and reported to you, "I injured my knee on this date, this time," what would you have done to him?

A. Send him to the office and have him fill out forms.

An administrative law judge filed an opinion on February 18, 2009. The administrative law judge found,

among other things, that claimant proved he sustained a compensable injury to his knee "on or about October 17, 2007." The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002) 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 objective medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). The employee'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).

In the present matter, the Full Commission finds that the claimant did not prove he sustained a compensable injury. The claimant contended that he sustained a

compensable injury to his right knee in "about October 2007." The claimant testified, "I was getting back up in the truck and I felt a sting like in my knee." The medical evidence does not corroborate the claimant's testimony. The claimant treated with Dr. Turner on October 15, 2007 for a right thigh "abscess," later described as a spider bite. There was no mention on October 15, 2007 of a sting in the claimant's knee while climbing into a truck. Dr. Turner noted while repacking the claimant's wound on October 17, 2007, "He also has hurt his right knee. *He doesn't know what he did. It started hurting this morning* [emphasis supplied]." The medical evidence before the Commission does not corroborate the claimant's testimony and does not demonstrate that the claimant sustained a compensable injury to his right knee on an uncertain date in October 2007.

The Commission recognizes that the claimant does not have to identify an exact date of injury; rather, the alleged specific incident must be "identifiable" by time and place of occurrence. See Ark. Code Ann. §11-9-102(4)(A)(i); *Edens v. Superior Marble & Glass*, 346 Ark. 487, 58 S.W.3d 369 (2001). Based on the record in the present matter, the Full Commission finds that the claimant was not a credible

witness and did not prove by a preponderance of the evidence that there was a specific incident identifiable by time and place of occurrence. Dr. Turner assessed "Chronic knee pain" on October 22, 2007 and did not report a specific workplace incident. Dr. Turner diagnosed "Right knee strain/sprain" on October 29, 2007, but there was still no report of an accidental injury or specific incident identifiable by time and place of occurrence.

Dr. Clark noted beginning November 29, 2007, "He had a hx of injury stepping up and down from a cab at work where he felt pain medially." In subsequent reports, Dr. Clark essentially opined that the claimant had sustained a right meniscal tear as the result of stepping out of a truck at work. The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. *Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000). In the present matter, the Full Commission finds that Dr. Clark's opinion was based on the history given him by the claimant, and we find that the claimant was not a credible witness. Further, Dr. Turner stated on March 10, 2008 that he discussed the claimant's injury with the claimant during the

"10/17/2008" office visit. The Full Commission finds that Dr. Turner's March 10, 2008 letter directly contradicts his treatment reports beginning October 15, 2007, and we find that Dr. Turner's March 10, 2008 letter is entitled to minimal evidentiary weight.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that he sustained an compensable accidental injury causing physical harm to his right knee. The claimant did not prove that he sustained an injury to his right knee which arose out of and in the course of employment, and the claimant did not prove that he sustained an injury which required medical services or resulted in disability. The claimant did not prove that he sustained a compensable injury to his right knee which was caused by a specific incident and was identifiable by time and place of occurrence. We therefore reverse the administrative law judge's decision, and this claim is denied and dismissed.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

An Administrative Law Judge found the claimant sustained a compensable injury to his right knee. The majority is reversing that decision and denying the claim. After a de novo review of the record, I find that the Administrative Law Judge correctly evaluated the claimant's credibility and properly found his testimony, along with evidence provided by his treating physician, was sufficient to meet his burden of proof. Therefore, I must respectfully dissent from the majority's conclusion to the contrary.

The claimant, who was 68 years of age at the time of the hearing, was employed as a module truck driver for the respondent-employer's cotton gin operation. (Module refers to large bales of cotton, and the truck was an 18-wheeled tractor-trailer rig). The claimant's job called for him to travel to cotton fields, where he would load cotton

onto the back of the truck and then transport it to the cotton gin. According to the claimant's description, which is undisputed by the respondent, the entry of the truck's cab was 5-1/2 to 6 feet from the ground. In order to enter the vehicle, the claimant climbed, using metal steps up the side of the truck into the cab. In addition to entering and exiting the truck during the normal course of the day, each cotton bale the claimant loaded required him to enter and exit the truck four times.

The module truck-driving that the claimant was engaged in was a seasonal employment. It generally began in September and lasted until December or January. The claimant stated he could not recall exactly when he injured his knee. However, he recalled sometime during the month of October feeling a "stinging pain" in his right knee while climbing in and out of his truck.

As outlined above, the claimant began receiving medical treatment in October 2007. While he was not able to pinpoint the date the injury happened, the claimant saw his treating physician, Dr. Rudy Turner, on October 15, 2007, for an unrelated medical problem. On that date, there was no mention of a knee injury. However, on October 17, 2007,

Dr. Turner's progress notes indicate the claimant was complaining of knee pain. Eventually, the claimant underwent a menisectomy, which only partially alleviated his problem. He later had a partial knee replacement in March 2008.

In reversing the Law Judge's decision, the majority found the claimant was not a credible witness. In effect, they did not believe his testimony that he injured his knee while climbing down from his truck. However, in reviewing the testimony and the medical evidence, I do not see any real basis for reaching this conclusion.

The claimant's version of having injured his knee is certainly a believable circumstance. That is, a man of his age may certainly have injured his knee while climbing into or out of the cab of the large tractor-trailer rig he was driving. The medical records also support the claimant's testimony.

The claimant's surgery was performed by Dr. Charles Clark, a Pine Bluff orthopedist. The claimant initially saw Dr. Clark on November 29, 2007, and in Dr. Clark's report, he specifically notes the claimant had a history of an injury while stepping up and down from a truck

cab at work. Dr. Clark also noted the claimant's injury was traumatically induced, most likely being injured at work. As Dr. Clark later explained, the traumatic injury to the claimant's knee caused rapid acceleration in the claimant's pre-existing arthritis, resulting in osteoarthritic changes, which eventually required the partial knee replacement.

In fact, even the testimony of Jody Schulz, the manager of the respondent, supports the claimant's contention that he spoke to his employer about his injury in October 2007. Significantly, under direct examination, the respondent's counsel asked Mr. Schulz if he could remember having a discussion with the claimant about difficulties with his knee. While Mr. Schulz stated he could not remember a specific date for the conversation, he believed it was about a "quarter of a way through" the harvest season. Since the Harvest season ran from September through December or January, October would have been about a quarter of the way through. This would be in line with the claimant's testimony that, sometime in October, he hurt his knee and told Mr. Schulz about it. I also note that Dr. Turner's medical report indicated the claimant first complained of a knee problem on October 17, 2007. Assuming

he had mentioned this condition to Mr. Schulz some time after that, it would appear the conversation between Mr. Schulz and the claimant would have been in late October 2007.

The principal basis the majority seems to rely upon to disregard the claimant's testimony is the early medical reports of Dr. Turner, setting out a history of a job-related accident. However, the claimant testified he had an initial discussion with Dr. Turner's nurse, and he could not recall what he might have told her, too. However, he did remember telling Dr. Turner he had hurt his knee at work. This was confirmed by a letter from Dr. Turner dated March 10, 2008, in which he stated the claimant advised him he had injured his knee while getting down from the truck on his initial visit the prior October.

While Dr. Turner's initial report did not mention a history of a job-related accident, I do not believe this oversight was particularly significant. The initial history was taken by Dr. Turner's nurse and his treatment notes almost exactly quote the nurse's language from her intake information. As indicated above, Dr. Turner later stated he

recalled the claimant telling him about a history of injuring his knee at work.

The claimant also testified when he initially told Mr. Schulz about a knee problem, Mr. Schultz advised him workers' compensation would not pay for any benefits. For that reason, the claimant did not take any further steps to obtain workers' compensation benefits from his employer until December 2007.

Mr. Schulz denied he told the claimant not to pursue a workers' compensation claim. On the other hand, during cross-examination, Mr. Schulz admitted he, too, had sought workers' compensation benefits based on a back injury, which had been controverted and denied. He said he was disappointed and that he may have told the claimant about this incident.

To the extent that Mr. Schulz and the claimant are in conflict, I find the claimant's version to be more convincing. Mr. Schulz is clearly an interested party, in that, he is the director of the respondent-employer who is self-insured. Payment of claims would reflect on the company's expenses, something Mr. Schulz would clearly wish to avoid. I also note the claimant's actions in not pursuing

a claim with his employer are in accord with this type of information being imparted to him. Not until he realized the severity of his injury after seeing Dr. Clark, did the claimant again attempt to pursue a workers' compensation claim through his employer. However, as Mr. Schulz predicted, the respondent controverted the claim.

The only other question regarding the claimant's testimony was the confusion over the date of the injury. When the claimant again approached his employer in December 2007, he was uncertain exactly when he had injured his knee. The Form N and First Report of Injury form prepared by the respondent-employer indicated a date of injury of October 28, 2007. However, the claimant stated he merely advised them the injury was in October, without a specific date. Even if the claimant had said he was injured on or about October 28, 2007, I do not believe this was a significant variation. As it has been held on numerous occasions, a claimant is not required to specifically provide a date of injury, just that the injury occurred at work.

In conclusion, I find the claimant provided credible testimony regarding the occurrence of a job-related injury. His testimony is supported by the medical records

and, to some extent, by the testimony of Mr. Schulz, an adverse witness. In denying this claim, the majority has simply chosen to ignore most of the evidence. While we clearly have the duty to weigh and evaluate conflicting testimony, there is little conflict in the testimony or evidence provided. In evaluating the evidence, I believe the majority has simply disregarded that which is contrary to their conclusion. Doing so is a clear deviation from our obligation to fairly and impartially consider all evidence before us.

For the reasons set out above, I respectfully dissent from the majority's Opinion.

PHILIP A. HOOD, Commissioner