

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F505333

JOSEPH H. WALKER II,
EMPLOYEE

CLAIMANT

H & M INTERNATIONAL TRANSPORTATION,
EMPLOYER

RESPONDENT

ZURICH AMERICAN INSURANCE CO.,
CARRIER

RESPONDENT

OPINION FILED JULY 8, 2009

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE MICHAEL C. STILES,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision by the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that the claimant was entitled to additional treatment as a result of his April 5, 2005, admittedly compensable injury. Based upon our de novo review of the record, we find that the claimant has failed to meet his burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant sustained admittedly compensable injuries to his left knee and left shoulder on April 5, 2005. The claimant slipped on some oil and hurt his left knee and left shoulder. The respondents accepted the claim as compensable and paid benefits including medical and temporary total disability benefits. The claimant received treatment for his left knee in the form of surgery, a partial meniscectomy and chondroplasty. Dr. A.H. Manugian was the claimant's treating physician. He noted in his operative report:

Arthroscopically, a significant synovitis and pathological medial peripatellar plica, significant anterior synovitis. Lateral compartment had normal meniscus, femoral condyle, tibial plateau. Intercondylar notch had normal anterior cruciate ligament and what appears to be a normal posterior cruciate ligament.

He released the claimant to return to full duty work without any restrictions on January 12, 2006. He also assessed the claimant with a 2% permanent anatomical impairment to his lower left extremity. Upon being released to return to work, the claimant returned to full duty. He worked for approximately six or seven months until he was terminated on

November 10, 2006, for reasons that were unrelated to his present claim.

After the claimant was released by Dr. Manugian on January 12, 2006, the claimant did not seek any medical treatment for his left knee until March 21, 2006, when the claimant sought treatment from Dr. W. Harold Knight. The claimant complained of pains associated with his left knee. The claimant underwent an MRI on April 28, 2008, which revealed a complete tear of the posterior cruciate ligament. The respondents denied the claimant's claim for additional medical treatment in the form of surgery as recommended by Dr. Knight as not being reasonable and necessary medical treatment related to the claimant's compensable injury. We agree with the respondents.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989

(Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

In our opinion, the claimant's left knee problems are not related to the claimant's April 5, 2005, admittedly compensable injury. The claimant went for more than two years without ever seeking medical treatment for his left knee. Despite his contentions at the hearing that he continued to suffer from left knee pain following his January 12, 2006, release, the claimant did not provide any evidence whatsoever proving that he sought treatment or received treatment for this alleged pain until March 21, 2008.

The medical evidence demonstrated that on January 12, 2006, the claimant was released to return to work by Dr. Manugian. Dr. Manugian's notes stated:

...is now approximately seven months
post his left knee partial meniscectomy

and chondroplasty. He has some weather related aching. Full range of motion today, no effusion. No patellofemoral crepitus. No collateral or cruciate laxity. Standing AP and lateral x-rays of his left knee reveal the medial and lateral as well as patellofemoral changes noted at the time of surgery. I feel at this point that he is at MMI. He is released from the knee standpoint. A permanent impairment rating according to the Fifth Edition of the AMA Guidelines page 546 table 1733 of 2% to the left lower extremity which is 1% to the body as a whole (the generative changes are pre-existing the injury). I will see him again on an as needed basis. He may return back to normal activities with no restrictions.

The claimant's testimony supports a finding that the claimant sustained an unrelated new injury.

A. The only thing I can say to that is it has fallen out from under me but I did not reinjure it. Skinned my hands when I landed ont he concrete, but, no I didn't reinjure it.

Q. [MR. MICHAEL HARRY] No further questions Your Honor.

COMMISSION

Q. [JUDGE BLOOD] Alright, in response to Mr. Harry's question, you indicated that your knee went out from under you?

A. Oh, yes. I should have mentioned that to you. It has done it on several occasions where it would just get a sharp pain in it and then it wouldn't catch and I would just go down.

Q. Your knee would give way?

A. Yes.

Q. And how, this has happened between the time of your last visit with Dr. Knight and ...?

A. Yes.

Q. About how many times has this happened between since...?

A. Three or four. I'm thinking of two specifically. One of them was when I was wearing a suit and I just fell down and rolled in the dirt and got dirty, and that got my attention. But its just that, the ice pick jam in my leg, I have moved it wrong, has caused that.

Q. Okay. So this happened after you were released or last seen by Dr. Knight?

A. Yes.

Q. And were there ay warning signs or indications that it was about to occur?

A. No. Its strange about how that, its just a sharp pain and just like, it while I'm walking, not when I'm standing still.

Q. Okay. So this has occurred about three times?

A. I'm sure three, maybe four, but three for sure.

Therefore, when we consider the fact that the claimant went over two years without reporting any problems to any medical professional, the fact that Dr. Manugian in his surgical notes indicated that he did not see any tear of the claimant's ACL whatsoever, the fact the claimant was released to return to work with a 2% permanent anatomical impairment rating on January 12, 2006, the fact that the claimant did not complain of any knee problems between January 2006 and March 2008, the fact that he went back to work for six or seven months without complaint before he was terminated, and the fact that the claimant stated that he had fallen down several times, we cannot find that the claimant proved by a preponderance of the evidence that the current problems with his knee were related to his April 5, 2005, admittedly compensable injury. Accordingly, the decision of the Administrative Law Judge is hereby reversed and this claim is denied and dismissed. The respondents are ordered and directed to pay the unpaid medical bills associated with the claimant's emergency medical treatment at Crittenden Memorial Hospital on April 5 and 6, 2005, and the cost of the ambulance fees incurred on April 5, 2005.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence his entitlement to the treatment recommended by Dr. W. Harold Knight subsequent to March 21, 2008, and therefore, I must respectfully dissent.

The claimant has undergone arthroscopic surgery to the left knee related to the April 5, 2005 work-related accident. While the claimant's left knee injury was rated by his treating physician, the credible evidence in the record reflects that the claimant continued to experience symptoms and complaints relative to the left knee. In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W. 2d 64 (1990). A

pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W. 2d 550 (1996).

Here, Dr. Knight who saw the claimant on March 21, 2008, regarding the claimant's left knee complaints, after examining same and reviewing diagnostic studies, has recommended further medical treatment. The evidence preponderates that the claimant's current left knee complaints are the product of the April 5, 2005 compensable injury in the employment of the respondents. Ark. Code Ann. §11-9-508(a) mandates that the employer provide such medical services as may be reasonably necessary in connection with an employee's injury. Cox v. Klipsch & Associates, 71 Ark. App. 433, 30 S.W. 3d 764 (2000). Therefore, I find that the claimant has sustained his burden of proof by a preponderance of the credible evidence that the surgical procedure as recommended by Dr. Knight is reasonably necessary in connection with the treatment of the April 5, 2005 compensable left knee injury.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner