

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F902882

BILL W. MONTGOMERY, EMPLOYEE	CLAIMANT
J & J LUMBER CO., EMPLOYER	RESPONDENT
BITUMINOUS CASUALTY CORPORATION, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JULY 20, 2010

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

Claimant represented by the HONORABLE SHANNON MUSE CARROLL,
Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the
Administrative Law Judge filed October 16, 2009.

The Administrative Law Judge entered the following
findings of fact and conclusions of law:

1. There was an employer-employee relationship on or about September 15, 2008.
2. The compensation rate is \$267.00.
3. The claimant has failed to prove by a preponderance of the evidence that he

sustained a compensable knee injury arising out of and in the course of his employment.

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.

Thus, we affirm and adopt the 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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant sustained a compensable medial meniscal tear while sweeping on or about September 15, 2008. I would reverse the decision of the Administrative Law Judge and award all benefits related to the claimant's compensable injury.

HISTORY

On September 14, 2009, claimant was employed at J & J Lumber Company. At that time, the claimant was employed in maintenance. His job involved shoveling, raking, and dumping hoppers. Claimant was injured on or about September 14, 2008, when he was shoveling wet sawdust into a hopper that was approximately 6-8 feet away from him. As he turned to throw it into the hopper, he felt a pain in his right knee. Claimant testified, "When I turned to throw it in the hopper, I felt a real sharp pain in the inside of my right knee."

At that time, claimant did not report his injury to his supervisor. He did tell his co-worker, Fred, that his knee was hurt. Claimant did not report his injury

because, at the time of his injury, there was no one in the plant other than he and Fred. Claimant testified that the day following his incident, he reported his injury to Ronald Jenkins, his supervisor. According to the claimant, Mr. Jenkins acknowledged that claimant had told him this. Claimant returned to work the next day, while his knee was very stiff, but completed an 8-hour day. Claimant was able to do this for three days before he finally saw a physician. When he sought medical care, the claimant went to St. Joseph's Outpatient Clinic.

At St. Joseph's the claimant was given a cortisone shot and a pain shot. He followed up with St. Joseph's and then went and saw Dr. Crenshaw, his family doctor. Dr. Crenshaw indicated that claimant should stay off of his knee and referred him to UAMS. The claimant ultimately saw Dr. John Wilson and Dr. Gruenwald for his right knee injury.

After being treated at UAMS, claimant was told by his physicians that his injury was work-related and, therefore, he went to the Workers' Compensation Commission and filed his claim.

At UAMS, the claimant underwent knee surgery. His MRI reflected that he had torn cartilage, which was

surgically repaired. Claimant was not released to return to work until June 25, 2009. Claimant received a 50% rating at that time.

The claimant has long suffered with gout, which makes his right foot and ankle swell. However, the claimant has testified that the gout has gone up to about his calf and a little below that, but has never gone as far as his knee.

DISCUSSION

In order to prove a compensable injury as a result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish (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 harm to the body that required medical services; (3) medical evidence supported by objective findings establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102(4) (Repl. 2007). If the claimant fails to establish by a preponderance of the

evidence any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineering Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The medical records clearly reflect that the claimant presented to his physician's office on September 18, 2008, complaining of pain in his right knee and that this knee was tender and warm. Additionally, the medical records clearly reflect that the pain in his right knee started one night before September 17, 2008.

While the claimant was initially diagnosed with gout, he had several follow-up appointments with both St. Joseph's Business Health and the Charitable Christian Clinic, which clearly document continued difficulties with the claimant's right knee pain. Ultimately, the Charitable Christian Clinic referred the claimant to the care of UAMS on March 5, 2009, when his physician, Dr. Crenshaw, wrote "Bill Montgomery has severe damage to right knee and is unable to be trained by rehab for work pending care at UAMS in Little Rock."

The claimant was seen at UAMS on March 13, 2009, at which time the following history was taken: "Right knee

pain start hurting at work 9/10/2008 - was shoveling some sawdust and his knee started hurting." Claimant underwent an MRI which showed damage to his knee of a radial tear to the medial meniscus. His treating physician at UAMS, Dr. John Wilson, wrote the following: "According to history this is a work related injury." Dr. Wilson ultimately performed surgery on claimant's knee, repairing the meniscus.

It is clear that the claimant had a medial meniscal tear, not gout. The respondent does not contradict the date on which the claimant was injured. No matter how many times claimant may have thought this injury was gout or may have even told people that he suffered from gout, that simply does not make it gout.

For the aforementioned reasons I must respectfully dissent.

PHILIP A. HOOD, Commissioner