

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F903935

CELIA METAMOROS-DIAZ,  
EMPLOYEE

CLAIMANT

CONAGRA FOODS,  
EMPLOYER

RESPONDENT

SEDGWICK CLAIMS MANAGEMENT SERVICES,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED FEBRUARY 16, 2011

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

Claimant represented by the HONORABLE LAURA MCKINNON,  
Attorney at Law, Fayetteville, Arkansas.

Respondent represented by the HONORABLE BILL H. WALMSLEY,  
Attorney at Law, Batesville, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondent appeals an administrative law judge's  
opinion filed May 27, 2010. The administrative law judge  
found that the claimant proved she sustained a compensable  
right knee injury. The administrative law judge awarded  
reasonably necessary medical treatment and temporary total  
disability benefits. After reviewing the entire record de

novo, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

The record indicates that Celia Matamoros-Diaz, age 63, began working for Conagra in February 2005. The claimant testified that she worked for the respondent as a processor: "We were making, I call them balls, little balls. It was a spaghetti and sauce." The parties stipulated that an employment relationship existed on March 23, 2009. The record indicates that the claimant was seen at Martin Medical Clinic on March 26, 2009, at which time it was noted, "c/o R knee pain - limping - pain 3 days - turned it wrong when walking - swelling."

An x-ray of the claimant's right knee was taken on April 1, 2009: "Osseous structures are intact. There is no osseous lesion or fracture depicted. Joint effusion is present. IMPRESSION: Joint effusion, otherwise unremarkable views knee."

The claimant gave a recorded statement to Priscila Baldovi on April 14, 2009. The claimant told Priscila Baldovi that she worked for the respondent as a processor, which duties involved placing food on plates and cheese on

salads with the use of a conveyor. Ms. Baldovi interviewed the claimant regarding an accident which occurred on March 23, 2009 at 8:45 a.m.:

PB: Okay, uh where were you, what part of the company were you, were you in your section at processing?

CMD: Yes in processing, we were going on break and I was walking, when ... I didn't step well with my foot, there is a little square there where you go through, where the water goes out....in the walkway....To go to break....

PB: But when you tell me to go to break, where were you going to take the break?

CMD: To the kitchen, right here at the same plant....

PB: Okay, and where did you put your foot?

CMD: On that little square there.

PB: I don't understand what is the little square, what is this square?

CMD: Like a recipient, do you know what a recipient of water is?

PB: Uh-huh.

CMD: Well.

PB: Well, is it deep?

CMD: No, it is not deep, no, no, no, only me, it is possible that I didn't step well to put the foot, I was walking fine.

PB: And why is this recipient there in the middle of the walkway?

CMD: Because it has to be there.

PB: Well, tell my what it has to be there.

CMD: The water goes there, it is small it is not big, because they put the clean trays there, the ones that wash the trays, and there they drain the water and ...

PB: But right thee (sic) in the middle of the walkway that's there?

CMD: Yes, yes....the water goes through there when they clean and the trays have a little bit of water and they drip and it goes there.

PB: It drips ... in other words, there is a trench on the floor?

CMD: Yes, a small grate, it's small, it's not that the grate is bad, you sometimes, perhaps I didn't step well to put the foot....

PB: Okay, and did you fall, did you twist your foot, you slipped, you fell ...

CMD: I didn't slip, I was walking when (*unintelligible words*) when I put the foot there....

PB: What thundered?

CMD: The knee....

PB: Okay, but what did the foot do, did it slip or you twisted it?

CMD: It twisted....

Dr. Owen Kelly examined the claimant on April 16, 2009:

Ms. Matamoros is a pleasant 61-year-old Hispanic lady who comes in today for evaluation of right knee pain and injury for about 3 weeks. She

states she was walking at work, stepped in a hole and twisted her knee. She has pain and has had the same amount of pain for three weeks. It hasn't gotten any better. Her daughter is with her who is translating for her today states the swelling and pain has actually continued to worsen. She denied any pain prior to the twisting injury....

A visual inspection of the right knee shows positive 1 to 2+ effusion....

X-RAYS: Both AP and lateral of the right knee are reviewed that were taken here today at the AR Orthopaedic Institute show what appears to be normal bony architecture. There may be some mild narrowing on the joint line but no evidence of fracture and no dislocation.

Dr. Kelly assessed "Right knee effusion and right knee medial meniscal tear." Dr. Kelly treated the claimant with an aspiration and injection. Dr. Kelly informed Dr. Damon G. H. Martin on April 16, 2009, "I saw a patient of yours today, Celia Matamoros. Ms. Matamoros is a pleasant 61-year-old lady who came in the clinic today for evaluation of a knee injury. She had a large 2+ effusion. I aspirated it today and then injected it. I am also going to order an MRI to further evaluate it and see exactly what is going on with her."

A note from Dr. Martin's clinic dated April 24, 2009 indicated that the claimant's right knee "popped while

walking at work." An MR of the claimant's right knee was done on April 24, 2009, with the following impression:

1. Vertical longitudinal type tear to the posterior horn of the medial meniscus at the meniscal root. There is medial extrusion to the medial meniscal body.
2. Horizontal oblique undersurface tear to the posterior horn of the lateral meniscus with truncated posterior horn.
3. Osteoarthritic change in the medial joint compartment with full-thickness cartilage defect in the medial femoral condyle. Minimal subchondral reactive changes identified.
4. Grade IV chondromalacia patella with full-thickness defect at the patellar apex.
5. Moderate-sized joint effusion with minimal synovial thickening. No well defined loose body is seen. Baker's cyst as above.
6. Mild prepatellar bursitis with edema anterior to the distal patellar insertion.

Dr. Kelly's assessment on June 8, 2009 was "Right knee medial meniscal tear, lateral meniscal tear, DJD. PLAN: I had a long discussion with Ms. Matamoros. She has what appears to be a bucket handle meniscal tear. She has a bad tear of the lateral meniscus. I would recommend arthroscopy. She going to think about her options and get back to me."

Dr. Kelly performed surgery on June 16, 2009: "Right knee partial, lateral and medial meniscectomy and chondroplasty of both the lateral femoral condyle and the medial femoral condyle." The pre- and post-operative

diagnosis was "Right knee medial meniscal tear, lateral meniscal tear and degenerative joint disease."

A physical therapist noted on June 18, 2009, "Patient reports injuring her knee while walking and stumbled at work on 3/23/09. She heard a pop. She underwent surgery on 6/16/09. She reports no numbness but pain with walking or bending the knee...."

A pre-hearing order was filed on December 28, 2009. The claimant contended, among other things, that she sustained a compensable injury on or about March 23, 2009. The claimant contended that she was entitled to reasonably necessary medical treatment and temporary total disability benefits. The respondent contended that the claimant did not sustain a compensable injury. The respondent contended that if the claim was found to be compensable, then the respondent was entitled to credit for any short-term disability, long-term disability, or group medical benefits paid.

The parties agreed to litigate the following issues:

1. Compensability of the claimant's work-related condition or injury, specifically, right knee injury.
2. Whether the claimant's injury was an idiopathic injury.

3. Whether the claimant was performing employment services.
4. Reasonably necessary medical treatment.
5. The claimant's entitlement to temporary total disability benefits....
6. Attorney's fee.

The claimant was deposed on January 13, 2010. The respondent's attorney examined the claimant:

Q. I want to talk a little bit about March the 23<sup>rd</sup> of 2009. This is the day that you hurt your right knee; is that right?

A. Yes, at 8:45 in the morning when I was going to break.

Q. What time did you go to work on the morning of March 23, '09?

A. 5:15.

Q. So you had been at work about three-and-a-half hours when you hurt yourself?

A. Yes....

Q. What I'm trying to find out is where you were going to take your break.

A. I was walking in the hallway. There is a kitchen there to eat, and I was headed toward the kitchen....

Q. How far had you gotten from your work station toward the kitchen when you hurt yourself?

A. I had walked about seven feet. I didn't wash my shoes, and they were filled with the sauce and spaghetti.

Q. So you were about a third of the way from your work station to the kitchen when you hurt your knee; is that right or wrong?

A. Yes. There's a place there where they wash dishes. When I went by there, there was water on the floor. I didn't know it; and when I put my foot down, my foot twisted.

Q. Who was with you, if anyone?

A. Two women and a man came afterwards and asked what happened? I grabbed hold of the wall because I felt dizzy, and then I walked toward the nurse's station holding onto the wall.

Q. Was one of those women Martha Campos?

A. Yes, and the other was Rosa....

Q. Did you fall to the floor?

A. I didn't fall because I grabbed the wall, and I felt the turn in my side and in my foot....

Q. When you hurt yourself by twisting, did you twist because the bottom of your shoe was slick from the sauce at the line?

A. That's what I think.

Q. Did anything else cause you to slip or twist?

A. There's a drain in the floor, and I put my foot down and it didn't quite - it wasn't level or something, and it twisted....

Q. Did you slip because the bottom of your shoe was slick from the sauce?

A. Yes, because I wasn't sick. It was just what was on my shoe.

Q. Did stepping on the drain cause you to twist or slip?

A. Yes, but also the stuff on my shoe.

Q. So you're telling my that both the stuff on your shoe and the drain caused you to twist and hurt your knee?

A. Yes....

Dr. Martin signed the following note on March 2, 2010:  
"Based upon some objective medical findings and within a reasonable degree of medical certainty, it is my opinion that Celia Matamoros-Diaz sustained a work-related injury on or about [March 23, 2009], which was the major cause of the patient's need for medical treatment and any resulting disability."

A hearing was held on March 24, 2010. The claimant testified on direct examination:

Q. And tell the Judge in some detail how you got injured.

A. We were going to break. I was walking and that day the sauce machine dumped off a lot of sauce and I stand on the sauce with my shoes because there was not another way to go. I was walking to the break, 8:45 in the morning. When I was walking there was drain water, I was walking. I didn't look, I didn't see it and my foot twist (sic)....I didn't fall on the floor because when I twisted my foot my mind went out for a couple of minutes and she just grabbed for the wall and she just walked like that to the nurse's station, grabbing the wall....

Q. Was there a drain involved?

A. Her shoe was real, had a lot of tomato sauce and there was a real little drain....

An administrative law judge questioned the claimant:

Q. At the time of the incident if it had not taken place, what would you have done while headed for your break? Were you headed to get a coke, to get your lunch or what were you headed to do?

A. After that what I did I went to the nurse's station.

Q. I know what you did but had the incident not occurred what would you have done?

A. I would go to the bathroom and go and eat. That's what I do. I used to do....

Q. Were you headed to eat when this incident occurred?

A. Yes.

Q. You were headed to the break room?

A. I was going to the break....

An administrative law judge filed an opinion on May 27, 2010. The administrative law judge found that the claimant proved she sustained a compensable injury to her right knee. The administrative law judge awarded reasonably necessary medical treatment and temporary total disability benefits. The respondent appeals to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

- (A) "Compensable injury" means:
  - (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[.]
- (B) "Compensable injury" does not include:
  - (iii) Injury which was inflicted upon the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated[.]

The same test is used to determine when an employee is performing "employment services" as to determine whether an employee was acting "within the course of employment" - the test is "whether the injury occurred 'within the time and space boundaries of the employment, when the employee [was] carrying out the employer's purpose or advancing the employer's interest directly or indirectly.'" *Pifer v. Single Source Transportation*, 347 Ark. 851, 69 S.W.3d 1 (2002) (quoting *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999)).

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann.

§11-9-102(4) (D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16) (A) (i).

The employee must prove by a preponderance of the evidence that she sustained a compensable injury. 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, an administrative law judge found that the claimant proved she sustained a compensable injury to her right knee. The Full Commission affirms this finding. The claimant began working as a food processor for the respondent-employer in February 2005. The parties stipulated that an employment relationship existed on March 23, 2009, and the claimant contends that she sustained a compensable injury to her right knee on that date. The record before the Commission corroborates the claimant's contention. The claimant sought medical treatment on March 26, 2009, where it was noted that the claimant had "turned" her knee at work three days earlier, and that the claimant was suffering from pain and swelling. The record includes a

recorded statement given by the claimant on April 14, 2009. The claimant stated that she had hurt her right knee on the respondent-employer's premises while walking to a scheduled break. The claimant stated that the floor on which she worked had a small "trench" from which water drained off trays that were being cleaned. The claimant stated that she twisted her foot near the wet trench, slipped, and felt "thunder" in her right knee.

Dr. Kelly's April 16, 2009 note corroborated the claimant's statement. Dr. Kelly reported that the claimant had "stepped in a hole and twisted her knee" approximately three weeks earlier. Dr. Kelly noted the objective medical finding of "effusion" in the claimant's right knee. A note from Dr. Martin on April 24, 2009 corroborated the claimant's statement; Dr. Martin reported that the claimant's knee "popped while walking at work." An MR study on April 24, 2009 revealed additional objective medical findings, including a tear in the medial meniscus of the claimant's right knee. Dr. Kelly performed surgery on June 16, 2009. Dr. Kelly noted at that time that the claimant was suffering from persistent knee pain following an injury. A physical therapist reported on June 18, 2009 that the

claimant had felt a "pop" in her knee after stumbling at work on March 23, 2009.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained an accidental injury causing physical harm to her right knee. The accidental injury arose out of and in the course of employment, required medical services, and resulted in disability. The injury was caused by a specific incident and was identifiable by time and place of occurrence on or about March 23, 2009. The claimant established a compensable injury by medical evidence supported by objective findings, including Dr. Kelly's findings of effusion and a right knee medial meniscal tear. These objective findings were causally related to the March 23, 2009 accidental injury.

In order to conduct the proper inquiry with regard to whether or not the claimant was performing employment services at the time of her injury, the Commission must determine whether the claimant was directly or indirectly advancing the interests of her employer. *Hudak-Lee v. Baxter County Regional Hospital*, 2011 Ark. 31, \_\_\_ S.W.3d \_\_\_. The issue of whether an employee was performing

employment services within the course and scope of employment depends on the particular facts and circumstances of each case. *Texarkana School Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). The Full Commission finds that the instant claimant was performing employment services at the time of her accidental injury. The claimant stated and testified that she hurt her right knee while walking to a scheduled break on the morning of March 23, 2009. The record indicates that the claimant twisted or turned her knee as the result of slipping near a trench, grate, or drain near the claimant's work area. Martha Campos testified that she was working with the claimant on the morning of March 23, 2009. Martha Campos acknowledged through an interpreter that, while she and the claimant were walking to their scheduled break, "I saw that she just went down and she asked what happened....when I saw her she was just grabbing her knee, her leg." Ms. Campos did not see any sauce on the claimant's shoes but testified, "We just passed the pan wash and we was just walking there." Although Ms. Campos testified that she did not see a "wet" area where the claimant was walking, her testimony regarding

the "pan wash" corroborated the claimant's testimony that there was a wet drain near the claimant's work area.

The testimony of the claimant and Martha Campos indicated that the claimant hurt her knee while walking to the respondent's break facilities for a scheduled break. The record therefore indicates that the claimant was injured while doing something generally required by her employer. *See Dearman v. Deltic Timber Corp.*, 2010 Ark. App. 87, \_\_\_ S.W.3d \_\_\_. The record does not indicate that Conagra shut down during the claimant's break, as was the circumstance in *Dearman*. Nevertheless, the instant claimant remained "on the clock" during her break and there was no evidence showing that the claimant was allowed to leave the respondent's premises during her 15-minute morning break. Martha Campos' testimony indicated that all of the employees in their work area were taking a break at the same time and were "walking fast" to get to the break area. Ms. Campos testified, "We were moving because the alarm was ringing that it was time for us to go to take our break....They were just walking and they were going fast because they just have 15 minute break so she was just walking."

We reiterate the claimant's testimony that she "would go to the bathroom and go and eat" during her scheduled break. The Arkansas Supreme Court has held that the activity of seeking toilet facilities, although personal in nature, has been generally recognized as a necessity such that accidents occurring while an employee is on the way to or from toilet facilities arise within the course of employment. See *Collins v. Excel Specialty Products*, 347 Ark. 811, 69 S.W.3d 14 (2002). The Supreme Court held that an employee's restroom break was "a necessary function and directly or indirectly advanced the interests of her employer." *Collins* at p. 819. The Full Commission finds that the instant claimant was performing employment services when she injured her right knee on March 23, 2009.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claimant proved she sustained a compensable injury to her right knee on March 23, 2009. The Full Commission affirms the administrative law judge's finding that the claimant was performing employment services at the time of her accidental injury, and that the claimant's injury to her right knee was not idiopathic. We affirm the

administrative law judge's finding that the medical treatment of record was reasonably necessary in connection with the claimant's compensable injury. We affirm the administrative law judge's finding that the claimant remained within a healing period and had not returned to work during the following dates: August 21-23, 2009; August 27-30, 2009; September 9-15, 2009; and September 28, 2009 through March 17, 2010. We therefore affirm the administrative law judge's award of temporary total disability benefits for the preceding dates. See *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The respondent is entitled to an appropriate credit in accordance with Ark. Code Ann. §11-9-411(Repl. 2002). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), in accordance with Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable knee injury. After conducting a de novo review of the record, I find that the claimant failed to meet her burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

My review of the evidence indicates that the claimant was not performing employment services. First and foremost, the claimant was going to break when she sustained her injury. The evidence demonstrates that the plant was not shut down for operation during the claimant's break, and the claimant was not on call. She was not required to perform any work duties during her break nor was she subject to being called back to work during her break. Her break was

strictly personal in nature and she could do whatever she wanted to do during the break. This was affirmed by the claimant during testimony.

The claimant's close friend, Ms. Martha Campos testified that she was walking with the claimant when she injured her knee. She did not see the claimant trip on any drain or twist her knee. She said the claimant was merely walking when the injury occurred. Ms. Campos stated that the area was dry and there were no drains in the area, and that she did not see any sauce on the claimant's shoes. The claimant contended there was sauce on her shoes, but Ms. Campos stated there was none there. The claimant gave conflicting versions of what caused her injury. However, all of those versions are quickly dismissed based upon the testimony of Ms. Campos who stated the claimant was merely walking and grabbed her knee.

Therefore, when I consider the fact that the claimant was not on a mandatory break during a shutdown, the fact that she was not required to be on call, the fact that she was not required to perform any duties during her break, the fact that she was not subject to being called back to work during her break, and the testimony of Ms. Campos, I

cannot find that the claimant was performing employment services at the time that she hurt her knee. The claimant was clearly was on a break that was personal in nature, and she could do whatever she wanted to during that break. Simply put, the claimant has failed to meet her burden of proof. Accordingly, for all the reasons set forth herein, I respectfully dissent from the majority's award of benefits.

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KAREN H. MCKINNEY, COMMISSIONER