

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H003431**

DALE BAKER, Employee	CLAIMANT
NORTHWEST ARKANSAS NEWSPAPERS LLC, Employer	RESPONDENT
AMERICAN ZURICH INSURANCE COMPANY, Carrier	RESPONDENT

**OPINION FILED JANUARY 11, 2022**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by RICK BEHRING, JR. , Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On October 19, 2021, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 10, 2021, and a Pre-hearing Order was filed on August 16, 2021. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 18, 2019, the relationship of employee-employer-carrier existed among the parties.
3. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$249.00 for temporary total disability benefits and \$187.00 for permanent partial disability benefits.
4. The respondents have controverted this claim in its entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether the claimant sustained a compensable left knee injury on August 18, 2019.
2. Whether the claimant is entitled to medical treatment related to his alleged compensable injury.

Claimant's contentions are:

“8-19-19 – getting into van then my knee bent back then messed up left knee.”

Respondents' contentions are:

- “1. Although the Respondents initially paid \$180.89 in medical benefits while investigating the claim, the Respondents ultimately denied and controverted the claim in its entirety.
2. The Claimant did not sustain a compensable left knee injury while employed by the Respondent employer on August 18, 2019.
3. The Claimant cannot establish a left knee injury with objective medical findings related to the alleged incident on August 18, 2019.
4. The Claimant is not entitled to any benefits, as the Claimant's need for medical treatment is unrelated to his employment for the Respondent employer. Instead, the Claimant's physical problems and need for treatment were the result of a degenerative and/or a pre-existing condition.
5. In the alternative, if it is determined the Claimant sustained a compensable left knee injury as a result of the alleged incident on August 18, 2019, the Respondents contend the Claimant merely sustained a temporary aggravation of his pre-existing left knee condition for which he previously resumed his baseline condition on August 21, 2019 when he was released from care and returned to work for the Respondent employer.
6. The Claimant voluntarily resigned his position with the Respondent employer on or about January 2020.
7. In the alternative, if it is determined the Claimant sustained a compensable left knee injury as a result of the alleged incident on August 18, 2019, the Respondents contend an independent intervening cause occurred in February and/or April 2020. The Respondents, therefore, contend that the Claimant's current condition and alleged need for treatment is related to these subsequent, intervening incidents and not as a result of the incident on August 18, 2019.
8. In the alternative, if it is determined the Claimant sustained a compensable injury and is entitled to any benefits, the Respondents hereby request a setoff for all benefits paid by the Claimant's group health carrier, all short-term disability benefits received by the Claimant, all long-term disability benefits received by the Claimant and all unemployment benefits received by the Claimant.”

The claimant in this matter is a 72-year-old male who was employed by the respondent as a delivery driver on August 18, 2019, when he alleges to have suffered a compensable left knee injury. The claimant represented himself in this matter and gave direct testimony in narrative form regarding his alleged left knee injury and the events shortly thereafter as follows:

MR. BAKER: Well, I was on duty. I was asked to go to Siloam Springs to deliver. Went there. Finished unloading. Started to get back in the van and my knee getting back in went like this (indicating). It took me about 10 minutes, 10 or 15 minutes to get back in the van. Drive back. When I got back to the plant, I could not put no pressure on my left leg. I had to have somebody help me - - well, actually, two guys help me backed to the office.

And then got in there. I went in and got me an ice pack because my leg was swollen, about twice the size of my knee. And then my boss asked me - - he asked me could I make my second run. I told him no and refused it. Give me transportation to the emergency room. He wanted me to sit around there.

And I had a couple of people who were leaving and one guy gave me a hand to my car. I drove down to my house. He followed me down. Helped me in my house. Then my son-in-law come over about an hour and a half later and took me to the emergency room.

Medical records introduced by the respondent show the claimant was seen at an emergency room by Dr. Travis Embry on August 18, 2019. Following is a portion of that medical record:

History of Present Illness

The patient presents with knee pain and knee swelling. The onset was 1 days ago. The course/duration of symptoms is constant. Type of injury: Felt pain while walking into a passenger van. Location: Left knee. The character of symptoms is pain, no swelling, not tingling, not numbness, not redness, no bleeding and not loss of mobility. The degree at present is moderate. There are exacerbating factors including movement, weight bearing and walking. The relieving factor is rest. Risk factors consist of none. Prior episodes: none. Therapy today: none. Associated symptoms: denies fever, denies chills, denies rash, denies edema, denies chest pain, denies shortness of breath and denies back pain.

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Musculoskeletal: Normal ROM, normal strength, no

tenderness, no swelling, no deformity. Lower extremity: Left knee, aligned, tenderness, range of motion (normal, active, passive), patellar grind test revealed crepitus, anterior and posterior drawer testing negative, varus and valgus stress to knee negative bilateral, distal motor and sensation intact, capillary refill less than 3 sec., no swelling, no abrasion, no erythema, no ecchymosis, Leg position: Normal.

At that time the claimant was diagnosed with “left knee pain, left knee arthritis.” The claimant’s condition was stable and he was medically cleared and discharged to home. The claimant was prescribed Naprosyn 500 mg., one per day for seven days, and then seven more tablets to be taken as needed.

The claimant alleges in his direct testimony that “my leg was swollen, about twice the size of my knee.” However, the medical record from his July 18, 2019 ER visit finds no swelling. The claimant also alleges he was unable to put pressure on his left leg and required assistance to walk. The ER record indicates that the claimant arrived in a private vehicle and was walking. It also reports normal active and passive range of motion and that his left knee is aligned. The claimant seemed simply to have pain.

On August 21, 2019, the claimant was seen by his primary care physician, Dr. Robert Wilson. Following is a portion of that medical record:

HPI  
Complains of knee pain but wants note to return to work. He has chronic left knee pain and usually wears a knee sleeve. Reports Aug 18 when he was getting into a van at work the knee buckled and he fell to ground. Went to ER and had benign rays. Naproxen was prescribed. He is now wearing a sturdier brace. It is better and he wants to return to work tonight. He would like refill of naproxen. He does not use OTC pain meds much.

The claimant was instructed to continue wearing the knee brace as needed and was released to return to work.

The claimant’s August 21, 2019 medical records from Dr. Wilson clearly indicate “the claimant usually wears a knee sleeve.” The claimant stated in cross-examination that that was not a true statement about him wearing a knee sleeve.

In the claimant's September 19, 2019 visit with Dr. Wilson, which was a wellness exam with a follow-up regarding the claimant's diabetes, Dr. Wilson's report states, "He is a very poor historian. He rarely gives a straight answer regarding whether he is up to date on shots, when his last colonoscopy was, et cetera." I also note the claimant's medical report from that visit does not indicate any left knee difficulties or complaints.

On December 19, 2019, the claimant was again seen by Dr. Wilson for a follow-up regarding his diabetes and on December 31, 2019, for a rash. I note that neither medical report indicates any left knee difficulties or complaints from the claimant.

On April 2, 2020 the claimant was again seen by Dr. Wilson. Following is a portion of that medical record:

HPI

Daughter brings him in due to a fall he had March 28 and confusion and weakness since then. He reports that morning he got off couch to use bathroom and his left leg gave way and he fell to the ground. He was apparently on the floor for a few hours. He denies being unconscious. He says he has a new phone he does not know how to use very well. He finally got phone call to daughter who came over right away. Daughter says she found him on couch. She says he is weak and seems a little confused since then. He is getting his days mixed up. He is not able to pay his bills like he usually does. She says he seemed his regular self last week. She says he has little appetite and family has to force him to eat. His left leg hurts, is weak, he is not able to stand very well.

Dr. Wilson recommended the claimant go to the emergency room due to his concerns the claimant had possibly had a stroke and due to his left leg weakness. The claimant also had an irregular heartbeat. The claimant was taken to the emergency room by his daughter and there received a differential diagnosis of left thigh cellulitis and AMS. The claimant was admitted to the hospital for further evaluation.

On April 7, 2020 the claimant underwent surgical intervention on his left knee at the hands of Dr. Marcus Heim. The operative report from that surgical intervention gives a pre-operative diagnosis of "abscess/septic left knee and distal quadriceps mechanism probable rupture left distal quadricep

mechanism” and a post-operative diagnosis of “abscess/septic left knee and distal quadriceps post abridement irrigation culture and wound VAC application. High-grade rupture left distal quadricep mechanism.” In Dr. Heim’s discussion and indication section of his operative report, he states:

“This patient had a quadriceps tendon rupture on the left and this resulted in an abscess of this distal portion of the thigh as well as a septic left knee. This has occurred over the last week and optimistically we got to the soon enough that we can keep the infection from destroying his joint. We will take him back to the OR again on Friday for a repeat debridement removal of wound VAC and delayed primary closure of the soft tissues.”

Dr. Heim did perform that second surgery on April 10, 2020. That operative report is found at Respondent’s Exhibit 1, Pages 28 to 31.

It is the claimant’s burden to prove that he sustained a compensable left knee injury on August 18, 2019 while entering a delivery van. The claimant must show the existence of objective medical findings regarding his left knee. The claimant is unable to do so. The emergency room report from the day he alleges the incident is clear that while the claimant reports swelling none is found by medical providers. The only symptom present is pain. In the claimant’s August 21, 2019 visit with Dr. Wilson, his primary care physician, there is also only a report of pain. The record notes “left knee is not tender to palpation. Has full ROM with no crepitus. No edema.” The claimant was returned to work at that time. Until medical records from the claimant’s April 2, 2020 visit with Dr. Wilson and his April 2, 2020 ER visit, there are no objective medical findings present regarding the claimant’s left knee. The claimant’s difficulties reported in his April 2, 2020 visit are from a fall that he had on March 28, 2020 at home and are in no way related to his employment with the respondent; as such, he is unable to prove a causal connection between those objective medical findings and his alleged injury on August 18, 2019. The claimant is unable to prove by a preponderance of the evidence that he suffered a compensable left leg injury on August 18, 2019 as he has alleged.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses

and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 10, 2021, and contained in a Pre-hearing Order filed August 16, 2021 are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that he sustained a compensable left knee injury on August 18, 2019.

3. The claimant has failed to prove by a preponderance of the evidence that he is entitled to medical treatment regarding his alleged left knee injury.

**ORDER**

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

**IT IS SO ORDERED.**

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**ERIC PAUL WELLS  
ADMINISTRATIVE LAW JUDGE**