

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H003947**

JASON DAVIDSON, EMPLOYEE

CLAIMANT

PETIT JEAN STATE PARK, EMPLOYER

RESPONDENT

**PUBLIC EMPLOYEE CLAIMS DIVISION,
CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 4, 2021

Hearing before Administrative Law Judge, James D. Kennedy, on the 27th day of April, in Little Rock, Arkansas.

Claimant is represented by Andy L. Caldwell, Attorney at Law, Little Rock, Arkansas.

Respondents are represented by Robert H. Montgomery, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 27th day of April, 2021, to determine the issues of compensability of an injury to the right knee, medical care for the right knee, and attorney's fees, with all other issues reserved. The claimant contended at the time of the pre-hearing telephone conference that he sustained multiple injuries involving his left wrist, left hand, right foot, right ankle, right knee, bilateral hips, and back in the course and scope of his employment on May 2, 2020, when his foot was caught in a machine. The respondents accepted the claimant's left wrist, left hand, right foot, and right ankle injuries, but denied treatment of the claimant's right knee, right hip, left hip, and back as compensable work-related injuries. However, at the time of the hearing, the parties were able to limit the issues to compensability of the injury to the right knee, medical for the right knee, and attorney's fees.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of the claim and that an employer-employee relationship existed on May 2,

2020, when the claimant sustained compensable injuries to the left wrist and right ankle. At the time of the work-related injury, the claimant earned an average weekly wage of \$634.43, sufficient for a temporary total disability (TTD)/permanent partial disability (PPD) rate of \$423.00/\$317.00. The witnesses consisted of Jason Davidson, the claimant, and David Caldwell and David Simms, both employees of Petit Jean State Park. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. An employer/employee relationship existed on May 2, 2020, when the claimant sustained compensable injuries to his left wrist and right foot.
3. At the time of the claimed injuries, the claimant earned an average weekly wage of \$634.43, sufficient for a TTD/PPD rate of \$423.00/\$317.00.
4. The claimant has failed to satisfy the required burden of proof to show by a preponderance of the evidence that the injury to his right knee was a compensable work-related injury.
5. Consequently, all remaining issues are moot.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The Pre-hearing Order, along with the Pre-hearing Questionnaires of the parties, were admitted into the record without objection. The claimant submitted two (2) exhibits that were admitted into evidence without objection, with the first exhibit consisting of 186

pages of medical records. The second exhibit consisted of nine (9) pages of non-medical records.

The claimant testified he was currently employed at Petit Jean State Park as a Maintenance Specialist and had worked at the park since 2002. (Tr. 6) On May 2, 2020, the claimant was loading logs on a log skidder truck after a big storm, which had knocked down a number of trees, had hit the park. (Tr. 7) The claimant was asked to move a Bobcat, which was described as a mini dozer with wheels with a fork on the front that was used to move the logs. (Tr. 8) A co-worker could not get the Bobcat to move, so the claimant stepped on the forks that were immediately in front of the driver, while holding on with his left hand and leaning inside. (Tr. 9) In the process, the claimant got his right foot pinched or trapped and pinned, causing the “worst pain I ever had [...] I realized that I had some damage, some real damage, because when I come down, I - - I tried to step on it and I couldn’t step on it. So I hobbled to a picnic table and I took my shoe off and, when I did, it was already purple.” At that moment, the claimant was not aware of problems with other body parts. (Tr. 10, 11)

The claimant stated he ultimately ended up with a left wrist injury that required surgery and which was accepted by the respondents. After the incident with the Bobcat, the claimant called his boss, Joe Buckley, who came down to check on him. The claimant was then taken to the hospital. At the time of the incident, the claimant stated he was not having problems with his right knee but started noticing problems about a week later. He testified his knee was “popping and clicking and kind of crunching in some ways.” (Tr. 12 - 14) He started receiving physical therapy and was placed on a restriction regarding the right foot. When he started noticing the problems with the right knee, he told his doctors.

(Tr. 15) The claimant admitted having surgery on his left wrist on June 18, which the respondents paid for. Doctor Howell treated his wrist and Doctor Head treated his hand.

(Tr. 19) The claimant testified he told Doctor Head about his knee, who proceeded to give the claimant a cortisone shot in the knee and a knee brace. He recommended an MRI, which had been denied. The knee was still clicking, popping, grinding, and hurting.

(Tr. 20) Surgery on the claimant's ankle was recommended after the ankle MRI, but the claimant has attempted to put off the surgery until the completion of the Cedar Falls Bridge. (Tr. 21, 22)

Under cross examination, the claimant admitted standing on the forks in the front of the Bobcat. His right foot was hanging off the fork toward the driver and his foot became lodged between the fork and the Bobcat. (Tr. 23, 24) The claimant was taken to the ER that day with the treatment initially focused on the right foot, and then later on the left wrist. The claimant also admitted he did not remember telling anybody at the ER that he had hurt his knee. (Tr. 25) In regard to first noticing the pain in the right knee, the claimant testified, "I mean, I don't know if it was because I was walking awkwardly or it was the damage to my ankle or whatnot. You know, I don't know what the onset of that was." (Tr. 26)

The claimant admitted signing the Form AR-N but was not sure he read the form at length. (Tr. 27) He contended someone in HR prepared the Form AR-N and he signed it. The claimant also stated he was not aware the form he signed on May 12, which referred to his foot and lower extremity. (Tr. 28) He also admitted signing a Form PECD 1 or Report of Accident, which also mentioned the claimant's foot and lower extremity but did not mention his knee. (Tr. 29, 30)

The claimant was also questioned about his medical exhibit on pages 45 and 46 wherein he presented to the office of Doctor Head on May 27, over three (3) weeks after the work-related incident with the Bobcat, with there being no mention of a complaint regarding the right knee. The claimant testified, “I don’t know the exact date that I told him, but I mean, I do remember telling him.” The claimant was also asked, in an attempt to be fair, about a report at page 49 of the claimant’s medical exhibit, which provided that the claimant had injured his right foot, right knee, and left wrist, and the claimant’s response was yes. (Tr. 31) He stated Doctor Howell referred him to Doctor Head, who was in the same office, and that Doctor Head recommended treatment for the knee, which initially involved receiving a cortisone shot. (Tr. 32) The claimant also testified he was told he would have to get pre-approved to obtain an MRI of the knee. (Tr. 33) Under cross examination, he could not recall telling his supervisors he had hurt his knee in the Bobcat incident. (Tr. 35)

The claimant admitted to performing work outside of his employment with the park prior to his injury, which consisted of brush clearing, pool cleaning, tearing down a storage building, and odd jobs. He also admitted that he installed a ceiling fan for his supervisor four (4) days prior to the hearing. He denied performing any other outside work in the last several months. He also admitted to wearing a knee brace prescribed by his doctor and to the fact that wearing a knee brace was “probably fairly common for a old guy doing heavy labor.” (Tr. 38, 39)

On redirect, the claimant was asked if the Form AR-N and the PECD 1 mentioned the left wrist and right ankle, and the claimant responded no, but agreed that both had been treated and paid for. The claimant also agreed that he had mentioned problems

with his right knee and that additional treatment was recommended. The claimant denied he injured his knee anywhere else or while performing odd jobs. (Tr. 39 – 41)

David Caldwell was called by the respondents. He testified he was also employed by Petit Jean State Park, worked as the Assistant Superintendent, and had been employed there for twenty-two (22) years this June. He supervised the maintenance department, the lodge complex, budget requests, major maintenance projects, etc., and admitted being one of the claimant's supervisors. (Tr. 44, 45) Mr. David Caldwell admitted to seeing the claimant on an almost daily basis and denied the claimant ever told him about injuring his right knee. He learned about the right knee from a call from the HR department a couple of months ago. (Tr. 47) Additionally, Mr. David Caldwell denied learning about the claimant's knee injury from the other workers until a couple of months ago. (Tr. 49)

On cross examination, Mr. David Caldwell admitted he did not know all the employees whom the claimant reported his injuries to. "I know people that he did report it to, but I don't know if there's other people he reported it to that I'm unaware of." (Tr. 53)

The respondents also called Danny Sims, an eight (8)-year employee of Petit Jean State Park whose title was Maintenance Supervisor and who admitted to supervising the claimant. He testified he learned of the claimant's incident involving the Bobcat the afternoon of May 2, 2020, when told by his supervisor. (Tr. 55) Mr. Sims was questioned whether the claimant complained about his right knee when they worked together and he responded, "Not right then, but yeah. As he said, we're older folks and both of us have issues, and you know, I do know he wears a knee brace, I wear a knee brace, but nothing

related to the skid steer, you know incident.” (Tr. 56) Under cross examination, Mr. Sims admitted he was not present at the time of the Bobcat incident. (Tr. 58)

Claimant’s Exhibit One was admitted into the record without objection and consisted of 186 pages of medical records. The claimant initially presented to the Conway Regional Health System on May 2, 2020, the day of the work-related incident, with the diagnosis being contusion of the right foot and left wrist pain. (Cl. Ex. 1, P. 1 - 44) A few weeks later, the claimant presented to Doctor James Head with Conway Orthopedic and Sports Medicine Center hereinafter called COSMC, on May 27, 2020, and the report provided that the claimant was suffering from a workers’ compensation injury to the right foot and left wrist. (Cl. Ex. 1, P. 45 – 46) Later, on June 9, 2020, the claimant returned to COSMC and Doctor Howell, with the report providing that the claimant had injured his right foot, right knee, and left wrist. (Cl. Ex. 1, P. 49 – 50)

Surgery was performed on his left wrist on June 18, 2020, by Doctor James Howell. (Cl. Ex. 1, P. 51 – 99) A work release dated July 1, 2020, provided the claimant could return to work on July 2, 2020, with no lifting with the left hand. (Cl. Ex. 1, P. 100 – 102) The claimant continued to present to COSMC in regard to the left wrist. On August 10, 2020, the claimant again returned to COSMC and was seen by Doctor James Head, presenting in regard to his right foot contusion, complaining of numbness and tingling in his toes and the bottom of his foot. He also described a popping and grinding in his knee, which he described as painful and stated he was having trouble keeping his balance. (Cl. Ex. 1, P. 118 – 121) After additional visits to COSMC, the claimant started receiving physical therapy on August 27, 2020, in regard to his right foot and ankle. He also received physical therapy relating to his left wrist and hand. (Cl. Ex. 1, P. 124 – 131) The

claimant continued to receive physical therapy on both his left wrist and hand and his right foot and ankle, with multiple visits to Atkins Physical Therapy. On September 28, 2020, COSMC issued a discharge note that only referred to the left hand and that the discharge was due to non-compliance. (Cl. Ex. 1, P. 153 – 155) It is noted, however, that the claimant continued to receive physical therapy in regard to the hand, with the next visits to Atkins Physical Therapy dated September 28 and September 30, 2020. (Cl. Ex. 1, P. 156, 157) The claimant returned to COSMC on November 11, 2020, and the report referred to the left wrist. (Cl. Ex. 1, P. 161 – 163) The claimant continued to receive physical therapy at Atkins Physical Therapy for his left wrist.

On November 9, 2020, six (6) months post-injury, the claimant returned to COSMC in regard to his right foot contusion, and the report provided that the claimant was ambulating without assistance, wearing normal shoes. The report also provided the claimant was complaining of right knee pain with a clicking. Doctor Head recommended an MRI of the right knee to assess for a meniscus tear and stated, “Please advise if knee is part of the compensable claim.” (Cl. Ex. 1, P. 166 – 171) The claimant continued to receive physical therapy of the left wrist and hand. (Cl. Ex. 1, P. 175 – 181)

Claimant’s Exhibit Two consisted of eight (8) pages of non-medical records. The First Report of Injury was dated May 12, 2020, and provided that the claimant “was training on a machine” and “was hit in the foot with a front loader.” (Cl. Ex. 2, P. 1 – 2) The report of injury, dated a day earlier, also provided that the claimant “was training on a machine. He was hit in the foot with a front loader.” (Cl. Ex. 2, P. 3 – 5) The Form AR-N, which was signed by the claimant provided that the “foot” was injured and the cause was again due to the claimant training on a machine and he was hit in the foot with a front

loader. (Cl. Ex. 2, P. 6, 7) Finally, the Employee's Report of Accident provided that the claimant injured his foot (Lower Extremities) and that he reported the injury to Joe Buckley while injured when "training on a machine." He was hit in the foot with a front loader. (Cl. Ex. 2, P. 8)

DISCUSSION AND ADJUDICATION OF ISSUES

In regard to the primary issue of compensability of the injury to the right knee, the claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation benefits for the injuries under the Arkansas Workers' Compensation Law. In determining whether the claimant has sustained his burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W.2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

Uncontroverted testimony provided that the claimant had a work-related incident on May 2, 2020. The incident occurred when the claimant crawled on the forks of a Bobcat holding on with his left hand and getting his right foot pinned between the forks and the Bobcat. The claimant was taken on the day of the incident to Conway Regional Health System ER, where he was diagnosed with a contusion of the right foot with left wrist pain. The claimant then presented to COSMC on May 27, 2020, with the report providing the claimant was suffering from a compensable workers' compensation injury to the right foot and left wrist. The claimant's testimony, which is found to be believable, is that he started having issues with his right knee but failed to tell his treating doctors.

The first medical report of record that mentioned the right knee was on June 9, 2020, when the claimant returned to COSMC and Doctor Howell, with the report providing that the claimant had injured his right foot, right knee, and left wrist. The report provided for no examination of the right knee. The claimant continued to be treated at COSMC and surgery was performed on the left wrist on June 18, 2020, by Doctor Howell. The claimant made multiple returns to COSMC, and physical therapy started on August 27, 2020. The medical records again mentioned the claimant complaining of his right knee on a visit to COSMC and Doctor Head on August 9, 2020, where the claimant described a popping and grinding in his right knee which he described as painful. The medical report provided that the claimant was being seen for his right foot contusion and again there was no record of an examination of the right knee. On November 9, 2020, the claimant again returned to COSMC in regard to his right foot contusion and again complained of his right knee clicking. The claimant testified that he had earlier received a right knee cortisone shot. Doctor Head recommended an MRI of the right knee to determine if there was a torn meniscus. A note provided that Doctor Head stated please advise if knee is part of the compensable claim.

The claimant testified he signed the Form-N but was not sure if he had read the form at length. The claimant also agreed he had signed the PECD 1 or Report of Accident which mentioned the claimant's foot and lower extremity but made no mention of his right knee. The claimant did testify that, although he did not know the exact date he told Doctor Head about his knee issue, he knew he told him. Danny Sims, a supervisor of the claimant, testified he was aware of the claimant complaining about his right knee but was not aware that it was related to the incident.

Under Arkansas law, a compensable injury must be established by medical evidence supported by objective findings and medical opinions addressing compensability and must be stated with a degree of medical certainty. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. Liaromatis v. Baxter County Regional Hospital, 95 Ark. App. 296, 236 S.W.3d 524 (2006). The burden of proving a specific-incident compensable injury is the employee's and must be proven by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i).

More specifically, to prove a compensable injury, the claimant must establish by a preponderance of the evidence: (1) an injury arising out of and in the course of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16) establishing the injury, and; (4) that the injury was caused by a specific incident and identifiable by time and place of occurrence. If the claimant fails to establish any of the requirements for establishing the compensability of the claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16). It is also important to note that the claimant's testimony is never considered uncontroverted. Lambert v. Gerber Products Co., 14 Ark. App. 88, 684 S.W.2d 842 (1985).

In the present matter, although the claimant's supervisor admitted the claimant complained about his knee, the supervisor did not make a connection about the right knee

and the claimant's contention that the problem with the knee was related to the work-related incident on May 2, 2020, until somewhat recently. The supervisor was aware that the claimant was using a knee brace, but so were other workers. The claimant admitted he had failed to initially tell his treating doctors about his right knee problems. The initial medical report of record that mentioned the right knee was on June 9, 2020, when the claimant mentioned the right knee problem to Doctor Howell of COSMC. There was no record of a medical examination of the knee at the time. Later, on August 9, 2020, the claimant again mentioned his right knee problem with the popping and grinding, this time to Doctor Head, also of COSMC. Again, there was no record of a medical examination of the right knee. The claimant again returned to Doctor Head on November 9, 2020, and again mentioned problems with his right knee along with his other issues. This report provided no mention of a medical examination of the knee but did provide that Doctor Head suggested an MRI to determine if there was a torn meniscus. The report also contained the following statement: Please advise if knee is part compensation claim. Clearly these medical reports provide no objective medical findings of a right knee injury or what was the cause of the injury. There were additional visits to health care providers and the knee was not mentioned.

Here, the claimant clearly appears to be a well-liked and dedicated worker at an Arkansas state park. However, speculation and conjecture cannot substitute for credible evidence, and there is no credible medical evidence supported by objective findings and medical opinions to provide that the claimant suffered a work-related right knee injury on May 2, 2020. Consequently, there is no alternative but to find that the claimant has failed

to satisfy the required burden of proof to show that he suffered a compensable work-related right knee injury on the date of the incident involving the Bobcat.

After reviewing all of the testimony and evidence that is before the Commission, and weighing the evidence impartially without giving the benefit of the doubt to either party, there is no alternative but to find the following:

1. The claimant has failed to satisfy the required burden of proof to show by a preponderance of the evidence that the injury to his right knee was a work-related compensable injury.
2. Consequently, all other issues are moot.

If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge