

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H006313

JACOB A. HENRICHSON, EMPLOYEE	CLAIMANT
WEST TREE SVC., INC., SELF-INSURED EMPLOYER	RESPONDENT
CENTRAL ADJUSTMENT CO., INC., THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 6, 2021

Hearing before Chief Administrative Law O. Milton Fine II on March 17, 2021, in Little Rock, Pulaski County, Arkansas.

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

Respondents represented by Mr. Patrick L. Spivey, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 17, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on February 10, 2021. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations and issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

HENRICHSON – H006313

2. The employee/self-insured employer/carrier relationship existed at all relevant times hereto, including August 27, 2020, when Claimant sustained compensable injuries to his left ankle and lower left tibia and fibula.
3. Respondents have accepted the above injuries as compensable and have paid benefits pursuant thereto.
4. Respondents have controverted Claimant's alleged left knee injury.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. After an amendment of Issue No. 2 at the hearing, the following were litigated:

1. Whether Claimant sustained a compensable left knee injury by specific incident, or in the alternative, is a compensable consequence of his stipulated compensable injuries.
2. Whether Claimant is entitled to reasonable and necessary medical treatment, to include an independent medical evaluation.

All other issues have been reserved.

Contentions

The respective contentions of the parties, following amendments at the hearing, are as follows:

Claimant:

1. Claimant contends that he sustained injuries to his left leg, left knee and left ankle when he fell from a vehicle in the course and scope of his employment on August 27, 2020.
2. Respondents have accepted the injury to the left leg and left ankle.
3. Respondents have denied compensability of the left knee, and have refused to provide treatment for same.
4. The claimant has had two (2) surgeries on the lower left leg and ankle. The claimant is currently under the treatment of Dr. Cherney.
5. The claimant contends that he sustained a compensable left knee injury, is entitled to medical care and treatment of the left knee, payment of medical expenses, and out of pocket expenses.
6. In the alternative, Claimant contends that his knee injury is a compensable consequence of his leg and ankle injuries; and he is asking for an independent medical evaluation in the event that it is found to be compensable.
7. All other issues are reserved.

Respondents:

1. Respondents contend that the claimant did not suffer a compensable injury to his left knee within the course and scope of his employment, at a time when employment services were being performed, and which

required medical services or resulted in disability or death as established by medical evidence and supported by objective findings.

2. The objective medical evidence shows that the claimant suffered an ankle injury on August 27, 2020, but not a knee injury.
3. The claimant did not report any complaints regarding his knee until November 2020.
4. The claimant's treating physician, Steven M. Cherney, M.D., saw the claimant for a follow-up appointment on December 31, 2020. At that appointment, the claimant complained of knee pain. Dr. Cherney examined the claimant's knee and noted that the knee did not have any effusion, was stable to varus valgus stress, and negative for McMurray and Lachman's tests.
5. An independent medical evaluation in this instance is not necessary because Claimant's alleged knee injury is neither compensable nor a compensable consequence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the hearing witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he sustained a compensable injury to his knee, whether as a result of the work-related incident of August 27, 2020, or as a compensable consequence of his stipulated compensable injuries.
4. Claimant has not proven by a preponderance of the evidence that he is entitled to reasonable and necessary treatment of his alleged left knee injury.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing.

In addition to the Prehearing Order discussed above, admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of one index page and 35 numbered pages thereafter; Claimant's Exhibit 2, non-medical documents including a case management report dated November 13, 2020 and a black-and-white photocopy of a photograph of Claimant's lower extremity, consisting of one index page and seven numbered pages thereafter; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of two index pages and 46 numbered pages thereafter; and Respondents' Exhibit 2, two color photocopies of

HENRICHSON – H006313

photographs of Claimant's lower extremities, consisting of one index page and two numbered pages thereafter.

Adjudication

A. Compensability

Introduction. In this action, Claimant has alleged that he suffered a compensable injury to his left knee. In doing so, he has posited that the occurred one of two ways: (1) by specific incident; or (2) as a compensable consequence of his stipulated compensable left ankle, tibia and fibula injuries. Respondents deny that he sustained a compensable knee injury in either fashion.

Standards. With respect to Claimant's specific-incident injury theory, Arkansas Code Annotated §11-9-102(4)(A)(i) (Repl. 2012) defines "compensable injury":

- (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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D) (Repl. 2012). "Objective findings" are those findings that cannot come under the voluntary control of the patient. *Id.* §11-9-102(16). The element "arising out of . . . [the] employment" relates to the causal connection between the Claimant's injury and his or her employment. *City of El Dorado v. Sartor*, 21 Ark. App. 143, 729 S.W.2d 430 (1987). An injury arises out of a

HENRICHSON – H006313

Claimant's employment "when a causal connection between work conditions and the injury is apparent to the rational mind." *Id.*

If the Claimant fails to establish, by a preponderance of the evidence, any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

As for his compensable consequence theory, every natural consequence of a compensable injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Hublely v. Best West. Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). The test is whether a causal connection between the two episodes exists. *Sword, supra*; *Jeter v. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780, 2009 Ark. App. LEXIS 947. It is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (1992). A finding of causation need not be expressed in terms of a reasonable medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinstall v. Asplundh Tree Expert Co.*, 84 Ark. App. 215, 137 S.W.3d 421 (2003).

A compensable consequence must be established utilizing all of the statutory elements of compensability. *Burkett v. Tiger Mart, Inc.*, 2009 AR Work. Comp. LEXIS 472, Claim No. F608022 (Full Commission Opinion filed May 4, 2009), *aff'd in part and rev'd in part on other grounds*, 2009 Ark. App. 93, 304 S.W.3d 2; *Jones v. B.A.E. Sys.*, 2004 AR Work. Comp. LEXIS 123, Claim Nos. F001696 & F212243 (Full Commission Opinion filed May 6, 2004). This includes the requirement that there be medical evidence of an injury support by objective findings. *Malone v. Mid-South Mfg., Inc.*, 2003 AR Work. Comp. LEXIS 638, Claim No. F100223 (Full Commission Opinion filed April 28, 2003).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the Claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Discussion. During the time period at issue, Claimant was employed by Respondent West Tree Service as a groundsman. His job entailed "pulling brush, putting it into a wood chipper, driving the truck, setting up jobsites, pretty much all the manual labor part of it." As the parties have stipulated, he suffered compensable injuries to his left ankle, tibia and fibula on August 27, 2020. He described what

HENRICHSON – H006313

happened: “Basically, I was exchanging a water cooler on the side of the truck. I was— it was raining. I was on the top step of the side of the truck. As I was stepping down, I missed the bottom step and landed on my left leg, onto the concrete.” Because Claimant was working for his employee in Baton Rouge, Louisiana, at the time this occurred, he underwent surgery on his left leg there. This consisted of the placement of an external fixator. A second surgery took place on September 30, 2020, at the University of Arkansas for Medical Sciences.

Claimant related at the hearing that around November 10, 2020, he told the nurse case manager that he was having problems with his left knee. However, the case manager’s report in evidence, dated November 13, 2020, reflects that it was on November 8, 2020 that this took place. Dr. Steven Cherney, the physician who performed Claimant’s second surgery, wrote on December 31, 2020, that Claimant had presented to him with “anterior based knee pain. He [Claimant] is not sure when this started.” Per the report, Claimant informed Cherney that he had swelling; and he showed the doctor pictures that had been taken on his phone. Cherney’s report reflects that while his examination revealed that Claimant’s foot was “very swollen,” he found no effusion in the knee. This is the only medical record that mentions the left knee.

Respondents’ Exhibit 2 contains color photocopies of color photographs taken of Claimant’s knees. Page 1 (a black-and-white version is contained in Claimant’s Exhibit 2) of the exhibit depicts his left (allegedly injured) knee; page 2 depicts the right. These were purportedly taken around November 8, 2020—contemporaneous with his

complaint to the nurse case manager. While Claimant testified that the photograph of the left—especially when compared to the right—shows the left knee to be swollen and discolored,¹ I do not find the photographs to reflect this. Only through speculation and conjecture could I find otherwise. But this I cannot do. See *Dena Construction Co. v. Herndon*, 264 Ark. 791, 796, 575 S.W.2d 155 (1979). Regardless, I note that while Claimant testified that his left knee was swollen at the time that Dr. Cherney examined it on December 31, 2020, the doctor did not make such a finding. Thus, assuming only for the sake of argument that objective findings can be established through a photograph or photographs, such do not do so here.

Per Claimant's testimony, he observed his left knee to be swollen on the interior side. His wife, Brandy Henrichson, related on the witness stand that the swelling was on both sides of the knee in question. But the Commission has held that lay observations do not constitute medical evidence supported by objective findings. *Overstreet v. Pontiac Coil, Inc.*, 2004 AR Work. Comp. LEXIS 361, Claim No. F307136 (Full Commission Opinion filed November 3, 2004). Consequently, I cannot credit their testimony on this point.

Because Claimant has not established that he has objective findings of a left knee injury, he cannot prove that he sustained a compensable injury to that knee—whether as a result of the work-related incident of August 27, 2020 or as a compensable

¹At another point during his testimony, Claimant stated that it was his attorney, not he, who pointed out that the photograph purported to show discoloration. Claimant testified that he did not observe discoloration.

HENRICHSON – H006313

consequence of his stipulated compensable injuries. This portion of the claim must fail at the outset.

B. Medical Treatment

Introduction. As part of his claim, Claimant has alleged that he is entitled to treatment of his alleged left knee injury. Respondents, in turn, have denied responsibility for said treatment.

Standards. Under Ark. Code Ann. § 11-9-508(a) (Repl. 2012), an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove, by a preponderance of the evidence, that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

Discussion. Because Claimant has not proven that he suffered a compensable left knee injury, he cannot, and has not, proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment of it.

HENRICHSON – H006313

CONCLUSION

In accordance with the findings of fact and conclusions of law set forth above, this claim is hereby denied and dismissed.

IT IS SO ORDERED.

Honorable O. Milton Fine II
Chief Administrative Law Judge