

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H006313

JACOB A. HENRICHSON, EMPLOYEE	CLAIMANT
WEST TREE SERVICE, INC., EMPLOYER	RESPONDENT
CENTRAL ADJUSTMENT COMPANY, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 16, 2021

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

Claimant represented by the HONORABLE ANDY L. CALDWELL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE PATRICK L. SPIVEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed April 6, 2021. The administrative law judge found that the claimant did not prove he sustained a compensable injury to his left knee. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

The claimant, now age 32, testified that he became employed as a groundsman for the respondents, West Tree Service, on December 24, 2019. The parties stipulated that the employment relationship existed at all

pertinent times, including August 27, 2020. The claimant testified on direct examination:

Q. Just tell the judge kind of briefly in your own words what happened.

A. 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.

The parties stipulated that the claimant “sustained compensable injuries to his left ankle and lower left tibia and fibula” on August 27, 2020. The parties stipulated that the respondents “accepted the above injuries as compensable and have paid benefits pursuant thereto.”

According to the record, the claimant treated at Baton Rouge General on August 27, 2020:

This is a 31-year-old white male with a history GERD was transferred from Midcity BRG ER on 8/27/2020 for evaluation of left ankle fracture. This a.m. patient was on a bucket truck when he fell from it about 5 feet height and landed on concrete. Patient landed on his left ankle and noted severe pain with motion and difficulty weightbearing....Patient went to the Midcity emergency department where left comminuted fracture of the tibia was seen. He was sent to the Bluebonnet for orthopedic evaluation. Patient denies previous injury to the left foot.

A physician’s impression was “Left distal tibia comminuted fracture with distal fibular diaphysis fracture.” Dr. Brian Perry performed a procedure on August 27, 2020: “Multiplanar external fixator application, left

ankle.” The pre- and post-operative diagnosis was “Left closed intra-articular distal tibia and fibular fracture.”

A CT of the claimant’s left ankle was taken on August 28, 2020 with the following impression:

1. Severely comminuted fracture of the distal tibia extending to the articular margin as described above.
2. Nondisplaced transverse fracture distal fibula.
3. External fixation as noted. No definite talar or calcaneal fracture. No prior CT’s for comparison.

The claimant began treating with Dr. Steven M. Cherney on September 1, 2020:

Jacob Henrichson is a 31 y.o. year old male patient. Date of injury 08/27/2020 patient sustained a left pilon fracture, closed. This was from a fall from a truck approximately 3 ft. He was seen and evaluated near Baton Rouge. He underwent external fixator at that time. The patient is following up here for definitive management. Patient has not had much pain medicine. He has had 1 dose of Lovenox. He has been compliant with weight-bearing restrictions except that he has already had a slip and fall. He has to get up at least 5 steps at his house and this is difficult for him as his other leg “does not work good,” as he had a prior injury to it....

CT scan from outside facility demonstrates a C type pilon fracture medial exit of the fracture. Medially based failure with simple fibula....

Discussion/Plan: Continue nonweightbearing left lower extremity. Will write for ramp for home....He is off work [indefinitely] at this time. Realistically, he will not be weight-bearing at this ankle for at least 3 months. He will not be without assistive device likely at least 6 months. He may not get back to work ever, but earliest my guess would be 1 year....

Long-term the patient’s ankle will never be the same. He will

likely have long-term complications and may eventually need [an] ankle fusion.

Dr. Cherney's impression on September 1, 2020 was "31-year old Pleasant male with left pilon fracture, with cough, date of injury 08/27/2020."

Dr. Cherney performed surgery on September 30, 2020: "1. Open reduction internal fixation of left tibia and fibula pilon fracture. 2. Removal of external fixator under anesthesia. 3. Stress examination, left ankle. 4. Open reduction, internal fixation of left distal fibula and tibia syndesmosis."

The post-operative diagnosis was "1. Left closed pilon fracture, tibia and fibula. 2. Previously placed external fixator. 3. Syndesmosis disruption, left ankle."

The claimant followed up with Dr. Cherney on October 15, 2020:

Overall doing ok. Weaning on pain meds, still asking for Norco at night. Asking for shower chair. Not compliant with taking ASA. Asking about driving and work status....
Plan: Take out sutures today. We will write for a shower chair we recommended taking aspirin to help prevent blood clots PE. Will write a small prescription of hydrocodone to provide some pain relief at night. This will be the last narcotic prescription that he needs from this clinic. He will be off work until we see him back. We will see him back in approximately 2.5 months time. We will then reassess. There is a chance that he can be made like (sic) duty at that time. He is unlikely to return to full duty until he is more than 6 months out from his surgery....

Dr. Cherney assessed "31-year-old male status post ORIF left Pilon 2 weeks out doing okay." Dr. Cherney also stated on October 15, 2020, "It

is my medical opinion that Mr. Jacob Henrichson should remain out of work until 12/31/2020.”

A case manager noted on November 8, 2020, “PC to check on Jacob. He says he is doing OK but having problems with his left knee being extremely painful and swollen. He said he can barely bend it.” It was noted on November 9, 2020, “PC from Jacob, he reports his knee is swollen and very painful. We discussed that I had told him to move it more the previous day and apply ice packs. He said he has, and it has improved some but still hurting. He is afraid he hurt it during the injury and is just now noticing it. I told him it would have shown up before now had [he] hurt it during the injury.” It was noted on November 10, 2020, “Jacob called me to report he is having problems with his knee. He said it has been swollen and painful for 2 weeks. I told him to move it more and apply ice packs and he reports it is a little better.” It was also noted on November 10, 2020, “Phone call from Andy Caldwell, just assigned to case. He discussed knee symptoms with me. I told him to call Liza McPhail as I did not have authority to schedule an appt for his knee. He discussed symptoms of knee pain, etc. and again I told him to call adjuster.”

The record contains a Progress Report #2 from Medical Case Management dated November 13, 2020:

Mr. Henrichson was injured when stepping down off the company bucket truck and missed bottom step on 8/27/20.

He was seen at Baton Rouge Medical Center and had an external fixator placed on his left leg/ankle and discharged home 8/30/20. He is s/p ORIF left tibia and fibula pilon fracture, removal of external fixator, and ORIF of left distal fibula and tibia syndesmosis on 9/30/20.

Jacob attended his post op on 10/15/20 and reports his left ankle/foot has improved since the surgery and he has more feeling in it now. Dr. Cherney examined his LLE and said his wound looks good therefore he will place in him a boot walker today....

MCM received a call from Attorney, Andy Caldwell, who was recently retained. He requested an appointment for his left knee which was not included with the claim therefore he was referred to the adjuster....

Dr. Cherney reported on December 31, 2020:

Date of injury 08/27/2020 initially spanned at outside facility he is now here for his 3 month follow-up after ORIF.

He is complaining of anterior based knee pain. He is not sure when this started. He thinks that there is some swelling. He also has pictures which [he] is showing me on his phone. He still has numbness in his foot. He is still having occasional ankle pain. He has been compliant with weight bearing restrictions....

His foot is very swollen.

His knee does not have any effusion today he is stable to varus valgus stress. Negative McMurray negative Lachman's.

Radiographic examination: Three view left ankle demonstrates intact implants of the left pilon fracture with healing. No obvious posttraumatic arthritis at this point....

Plan: Begin weight-bearing as tolerated left lower extremity.

He would benefit from physical therapy that focus on stretching as well as gait training and strengthening. I think that water therapy would help him. He is at very high risk of continuing to develop a heel cord contracture. I suspect that he was not great about getting his foot plantigrade in his boot. His syndesmosis screw also may be adding to this step.

Realistically, I think that he will need to have some sort of heel cord release plus or minus removal of the syndesmosis screw to address his lack of dorsiflexion.

Long-term, his ankle is almost certainly likely to go on to posttraumatic arthritis requiring an ankle fusion. This would be sometime between 1 year to indefinitely. Given the combination of symptoms including possible nerve injury in addition to long-term ankle complaints, I am suspicious that he will end up needing an FCE. He is not cleared to work at this time, as his employer does not have any light duty. He will not be realistically able to even bear full weight outside of the boot for the next 6-8 weeks. I would anticipate that he would be able [to] tolerate a full day work potentially ever (sic), but certainly not before the 6 month postoperative mark.

Dr. Cherney assessed “31-year-old male status post ORIF left pilon fracture 3 months out doing okay.”

The claimant was evaluated at McMaster Physical Therapy Clinic on January 7, 2021:

The patient is a 32 year old male being seen for Ankle Pain. Pain rating is currently at 3/10. Patient reports that he fell out of the back of a bucket truck at work. He fractured the left Tib/Fib and had surgery the same day as the incident on Aug 27, 2020. Patient is in a boot and currently WB as tolerated but utilizing a wheel chair in the community due to pain and reported difficulty with assistive devices. Patient was NWB until 12/31/2020. Patient complains of pain at heel, stiffness at foot/ankle/calf, right knee pain, pain at LE Left D3, 4 with WB....Patient reports he is currently off work.... Patient would benefit from skilled therapy to restore prior level of function....

The claimant began a series of treatments at McMaster Physical Therapy Clinic. A physical therapist noted on February 9, 2021, “Patients (sic) states his ankle is fine. He states he has been walking around his house and usually can only make it 20 feet due to hip and back

pain....Patient required multiple [breaks] during several exercises due to his low back pain. Patient was given new stretches and exercises to address low back issues....Plan: The patient will continue with treatment. Patient presents post left tib/fib fracture. Patient will continue with the above progressing as tolerated, using modalities as needed.”

A pre-hearing order was filed on February 10, 2021. According to the text of the pre-hearing order, the claimant contended, “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 his left knee, payment of medical expenses, and out of pocket expenses. 6. All other issues are reserved.”

The parties stipulated that the respondents “have controverted the claimant’s alleged left knee injury.” The respondents contended, “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."

The text of the pre-hearing order indicated that the parties agreed to litigate the following issues:

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. All other issues have been reserved.

The claimant continued to treat at McMaster Physical Therapy Clinic.

A hearing was held on March 17, 2021. The claimant testified on direct examination:

- Q. Are you still having problems with your knee?
A. Yes.

Q. Are you asking the judge to order an evaluation of your knee just to see what's going on there?

A. Yes, that is what I'm requesting.

An administrative law judge filed an opinion on April 6, 2021. The administrative law judge found that the 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." The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4)(Repl. 2012) provides, in pertinent part:

(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[.]

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 which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

The employee has the burden of proving by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. §11-9-102(4)(E)(i)(Repl. 2012). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003).

An administrative law judge found in the present matter, “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.” The Full Commission affirms this finding.

The parties stipulated that the employment relationship existed on August 27, 2020. The claimant testified that he fell from a truck and “landed on my left leg, onto the concrete.” The parties stipulated that the claimant “sustained compensable injuries to his left ankle and lower left tibia and fibula” on August 27, 2020. The evidence does not demonstrate that the claimant also injured his left knee on that date. The claimant treated at Baton Rouge General on August 27, 2020, at which time a physician’s impression was “Left distal tibia comminuted fracture with distal fibular diaphysis fracture.” There was no indication that the claimant also injured his left knee. Dr. Cherney reported on September 1, 2020 that the claimant

“sustained a left pilon fracture, closed.” The “pilon” is the shinbone (tibia) near the ankle. Dr. Cherney did not report that the claimant also injured his left knee. Dr. Cherney performed surgery on September 30, 2020 which included “1. Open reduction internal fixation of left tibia and fibula pilon fracture.”

The claimant began informing a case manager on November 8, 2020 that his left knee was painful and swollen, but there was no corroborating medical evidence. The parties introduced into the record what the claimant described as photographs of his left and right knees. The claimant testified that these photographs were taken on November 10, 2020. The Full Commission is unable to determine that the photographs of the claimant’s knees establish a compensable injury with objective medical findings. Dr. Cherney reported on December 31, 2020, “He is complaining of anterior based knee pain. He is not sure when this started. He thinks there is some swelling. He also has pictures which [he] is showing me on his phone.” However, Dr. Cherney did not report any objective medical findings of an injury to the claimant’s left knee and expressly noted, “His knee does not have any effusion today he is stable to varus valgus stress.”

The Full Commission finds that the claimant did not prove he sustained a compensable injury to his left knee in accordance with Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012) *et seq.* The claimant did not

prove he sustained an accidental injury causing internal or external physical harm to the left knee. The claimant did not prove he sustained an injury to his left knee which arose out of and in the course of employment, required medical services, or resulted in disability. The claimant did not prove he sustained an injury to his left knee which was caused by a specific incident or was identifiable by time and place of occurrence on August 27, 2020. The claimant also did not sustain a compensable injury to his left knee which was established by medical evidence supported by objective findings.

The Full Commission also affirms the administrative law judge's finding that the claimant did not prove he sustained a compensable injury to his left knee "as a compensable consequence of his stipulated compensable injuries." When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. The basic test is whether there is a causal connection between the injury and the consequences of such. *Id.* The burden is on the employee to establish the necessary causal connection. *Id.* Whether there is a causal connection is a question of fact for the Commission. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). (The Full Commission is unaware of any statutory

or appellate authority which requires an employee to prove a natural consequence with objective medical findings.)

In the present matter, the parties stipulated that the claimant “sustained compensable injuries to his left ankle and lower left tibia and fibula” on August 27, 2020. The Full Commission has determined *supra* that the claimant did not sustain a compensable injury to his left knee on August 27, 2020. The claimant informed a case manager on November 8, 2020 that he was suffering from left knee pain and swelling, but there is no probative evidence of record which demonstrates that the claimant’s reported left knee difficulties were a natural consequence of the August 27, 2020 compensable injury. Dr. Cherney, a treating surgeon, examined the claimant on December 31, 2020 and did not opine that the claimant had sustained a left knee injury as a natural consequence of the August 27, 2020 compensable injury. Nor can any of the subsequent physical therapy notes be interpreted as showing that the claimant sustained a compensable injury to his left knee as a natural consequence of the compensable injuries sustained August 27, 2020. The Full Commission therefore affirms the administrative law judge’s finding that the claimant did not prove he sustained a compensable injury to his left knee “as a compensable consequence of his stipulated compensable injuries.”

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant did not prove by a preponderance of the evidence that he sustained a compensable injury to his left knee on August 27, 2020. We also affirm the administrative law judge's finding that the claimant did not prove he sustained a compensable injury to his left knee as a "natural consequence" of the compensable injury sustained on August 27, 2020. The Full Commission therefore respectfully denies and dismisses the claim for worker's compensation benefits related to the claimant's left knee.

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

M. SCOTT WILLHITE, Commissioner