

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. H206201**

CHARLES E. MACKEY, EMPLOYEE

CLAIMANT

**DRAGON WOODLAND SAWMILL CORP.,
EMPLOYER**

RESPONDENT

**TRAVELERS PROP. & CASUALTY CORP.,
CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 13, 2023

Hearing before Administrative Law Judge O. Milton Fine II on July 28, 2023, in Marion, Crittenden County, Arkansas.

Claimant *pro se*.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 28, 2023, the above-captioned claim was heard in Marion, Arkansas. A prehearing conference took place on May 22, 2023. The Prehearing Order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. After an amendment at the hearing, they read as follows:

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

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2. The employee/employer/carrier/third-party administrator relationship existed among the parties on November 30, 2021, when Claimant sustained a compensable injury to his left knee by specific incident.
3. Respondents accepted this claim as a medical-only one and paid benefits pursuant thereto.
4. Claimant's average weekly wage of \$411.90 entitles him to compensation rates of \$275.00/\$206.00.

Issue

At the hearing, the following was litigated:

1. Whether Claimant is entitled to temporary total disability benefits.

All other issues have been reserved.

Contentions

The respective contentions of the parties are as follows:

Claimant:

1. Claimant contends that he is entitled to temporary total disability benefits in connection with his stipulated compensable left knee injury.

Respondents:

1. Respondents contend that they accepted and have paid reasonable, necessary and related medical treatment in connection with Claimant's compensable injury. His Form AR-C and prehearing questionnaire response note two different dates of injury to which Respondents have no knowledge or notice as none was reported on either date. IF Claimant is

contending any injury on the January 10, 2021, date, the statute of limitations has run. IF Claimant is contending an injury on January 5, 2022, this is the first notice received by Respondents, and they are not responsible for any related medical treatment.

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 Claimant and to observe his 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 his entitlement to temporary total disability benefits for any period.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of seven numbered pages; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and 18 numbered pages

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thereafter; Respondents' Exhibit 2, Claimant's Form AR-C and prehearing questionnaire response, consisting of one index page and four numbered pages thereafter; and Joint Exhibit 1, copies of the Form AR-W for this claim, consisting of two pages.

Adjudication

As the parties stipulated *supra*, Claimant was an employee of Respondent Dragon Woodland Sawmill Corporation ("Dragon") on November 30, 2021, when he suffered a compensable injury to his left knee in a specific incident. They accepted this as a medical-only claim and furnished benefits in connection with it. In this action, Claimant has asserted that Respondents should also pay him temporary total disability benefits. They dispute this.

Claimant's stipulated compensable injury is a scheduled one. See Ark. Code Ann. § 11-9-521(a)(4) (Repl. 2012). An employee who has sustained a compensable scheduled injury is entitled to temporary total disability compensation "during the healing period or until the employee returns to work, whichever occurs first . . ." *Id.* § 11-9-521(a). See *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Claimant must prove his entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012). This standard means the evidence having greater weight or convincing force. *Barre v.*

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Hoffman, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). 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.*

Claimant, who is 45 years old and attended two years of college, testified that his job at Dragon, a timber-cutting business, was to use a chainsaw to remove all of the limbs from trees that had been felled. Asked how he injured his knee on November 30, 2021, he responded:

During November we was—I can't remember the time, but I was approaching a tree. I was cutting up a big tree. It was a big tree, a limb off the tree. And I was cutting, although the saw was dull, but I was holding the tree cutting it, cutting it, cutting, it, and while I was going down, it kicked back. So I went underneath the tree, started cutting at the bottom of the tree, and then I went back on top to finish . . . [s]o during the time I went back on top of the tree, when I'd keep—it was—I was cutting the tree, the limb, and it kicked back, so I held it—I held it down like this right here so I could put force on it to keep at it. And during the process when I was cutting it, when it kicked back, I pushed it back down to hold it to keep it from coming back, and I went down on my left knee. I cut my left knee trying to hold it, the chainsaw, down in the wood so I could finish cutting it.

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According to Claimant, the contact with the chainsaw left more than a superficial wound:

“Whew, it was—oooo. I ain’t never seen a bone before inside of a human body until I seen my own, but I cut it right across at an angle, and I cut the top of it and the gristle. It was cut pretty deep . . . you could see the bone it it . . . [i]t was like a filet.

Following the accident, Claimant was transported to Forrest City Medical Center, where he was seen in the emergency room. The records of that visit show that he presented with multiple left knee lacerations that measured from 2.6 to 7.5 cm long and were no longer bleeding. Following x-rays, he was diagnosed as having, inter alia, a fractured left patella. The cuts were closed with eight “simple sutures.” Claimant was only off work for one day—December 1, 2021—due to his knee. On December 2, 2021, he went back to work at Dragon.

The records of Claimant’s emergency room visit—the sole treatment he has undergone in connection with his knee injury—do not reflect that he was taken off work.

The following exchange occurred:

Q. So far as you know, there’s not a doctor that’s taken you out of work, correct?

A. Correct.

However, he also testified that emergency room personnel advised that he take some time off work. He did this—staying away from his job a single day. His records also do not show that he was assigned light duty by a physician. But Claimant disagreed, stating that that this occurred and, based on this, his duties at Dragon were modified for roughly three weeks. They consisted of his sitting on the tailgate of a pickup truck,

sharpening and servicing the chainsaws. Claimant explained why he could not resume his regular limb-cutting tasks at that point:

I wasn't eligible to do any walking . . . [w]asn't able to put no pressure. A chainsaw weighs 20 pounds.¹ I couldn't put no pressure on my leg, and I couldn't do no walking. I was going through mud and sticks, because we was in the woods.

According to Claimant, after this period of light duty, he went home to Mississippi for Christmas. In early January 2022, when the timber-cutting project in Arkansas resumed, he was returned to his former job because the timber crew was short-handed. His supervisor, Joe, made this determination and informed him. Claimant's testimony on this matter was inconsistent. He first said that he was only able to trim "two to three trees." Later, he stated that he successfully resumed his regular duties for two or three days but was unable to continue at some point on the last day. Asked what was happening while he was doing this, he replied: "My knee was like—it was stiffening up. It was getting sore. It was stiffening up and I just couldn't bear the pain." Claimant described having trouble walking, steadying himself in the mud, and applying pressure to cut the limbs. He stated that once he began cutting a second tree, he had to cease working because his leg was "tingling . . . and it was just too stiff to bear it." Claimant returned to the work truck, and his fellow crew members brought the trees to him there to strip.² While their work day normally ended at 5:00 p.m., Claimant had to stop using the chainsaw that day at 3:00 p.m. because he felt he could not continue. From that

¹Shortly thereafter, Claimant related that he was "carrying a 15-pound chainsaw," and offered no explanation for the weight discrepancy.

²Claimant did not make clear on which day this impromptu modification took place.

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point until quitting time, he simply gathered trash for burial. Joe approved of this. The testimony of Claimant was that he did not request to go back to the chainsaw-servicing job.

Later that evening, per Claimant, he informed Joe that he would not be able to finish the job. Joe responded that he understood, and that Claimant had to do whatever he had to do. The next day, Joe drove him from the Arkansas jobsite back to Mississippi.

The following exchange took place on direct examination:

Q. Were you—did you ever go back to work for Dragon?

A. No, sir.

Q. Okay. Did anybody from Dragon ever tell you don't come back, or fire you or anything?

A. No, sir.

Q. Okay. As of sitting here today, do you know if you're still an employee of Dragon?

A. No, sir.

Q. You don't know whether or not you are?

A. I know I'm not.

Q. Why do you know that?

A. (No audible response)

Q. Did anybody ever tell you you were fired?

A. No, sir.

Q. Did you tell Joe you were quitting?

A. I did told him I couldn't handle it.

Q. I mean, did you resign your job?

A. Yes, sir. Yes, sir. Well, to my knowledge, I heard they wasn't in business no more or something.

Q. Okay. But I was trying to find out on this—

A. Okay.

Q. —you basically told your supervisor that you were quitting your job?

A. Yes, sir.

Q. Okay. And he took you home to Mississippi?

A. Yes, sir.

The subject arose again on cross-examination:

Q. Now, you were not fired from Dragon, were you?

A. No, sir.

Q. All right. You decided you just couldn't do the job and so you took yourself out of work?

A. Yes, sir.

Q. And you told Joe, "I'm not coming back."

A. Yes, sir.

Q. Now, you've not been back to Dragon to work at any point after that?

A. No, sir.

After his resignation, Claimant did not go back to work anywhere for about three and one-half months. He asked that he be awarded temporary total disability benefits for this period. In describing his condition during this time, he related:

[T]here where [sic] the months I was out, I just couldn't do it. I couldn't perform, I couldn't move it. I couldn't, you know, my leg would stiffen up . . . it's like stiff, like I told—like it was hard to bend it. It was hard to bend my knees, and it was feeling like, when I put weight on it, it didn't feel like—it didn't feel like I had a knee. Didn't feel like I had a leg.

Asked about his stitches, Claimant testified that approximately three weeks after he received them, “[t]hey rotted out.” He later³ stated that this occurred in January 2022. The only treatment he ever received on his left knee was the November 30, 2021, emergency room visit. While he later attempted to see a doctor, he was unsuccessful.

The foregoing evidence shows that prior to the day in January 2022 that Claimant quit his job at Dragon, he had missed only one day of work due to his injury: December 1, 2021. But a claimant must demonstrate that his disability lasted more than seven days. Ark. Code Ann. § 11-9-501(a)(1) (Repl. 2012). Thus, he cannot establish his entitlement to temporary total disability benefits unless he can extend this period by six more days.

But Claimant has been unable to do this. Again, his unequivocal testimony was that the last day he was on the timber-cutting job in Arkansas, he resigned. The Arkansas Court of Appeals in *Lybyer v. Springdale Sch. Dist.*, 2019 Ark. App. 77, 568

³Even later, Claimant acknowledged that he does not know when the stitches dissolved.

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S.W.3d 805, held that “a voluntary resignation is a refusal to return to work [per Ark. Code Ann. § 11-9-526 (Repl. 2012)]⁴, which does not entitle [a claimant] to TTD benefits under the Act.” Because of this, Claimant has not proven his entitlement to temporary total disability benefits.

CONCLUSION

In accordance with the Findings of Fact and Conclusions of Law set forth above, this claim for additional benefits is hereby denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge

⁴This provision reads:

If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.