

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002705

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| JESSICA L. SAGE, Employee | CLAIMANT |
| TRI-STATE ENTERPRISES, INC., Employer | RESPONDENT |
| TRAVELERS INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED JANUARY 6, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 7, 2020, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on October 1, 2020 by Administrative Law Judge Amy Grimes and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The employee/employer/carrier relationship existed on April 17, 2020.
3. The respondents have controverted this claim in its entirety.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant sustained a compensable injury to her left knee on April 17, 2020.
2. Whether claimant is entitled to medical benefits.
3. Whether claimant is entitled to temporary total disability benefits from April 18, 2020 to a date yet to be determined.
4. Attorney's fee.

The parties were unable to stipulate to a compensation rate prior to the hearing. Accordingly, the claimant's compensation rate has been added as an issue to be determined.

The claimant contends she sustained a compensable injury to her left knee on April 17, 2020. As a result of her compensable injury she is entitled to temporary total disability benefits from April 18, 2020 until a date yet to be determined and reasonably necessary medical treatment. The claimant contends her attorney is entitled to an attorney's fee.

The respondents contend claimant did not sustain a compensable injury within the course and scope of her employment.

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 a pre-hearing conference conducted on October 1, 2020 and contained in a pre-hearing order filed that same date are hereby

accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on April 17, 2020.

3. Claimant is entitled to payment of all reasonable and necessary medical treatment provided in connection with her compensable left knee injury. This includes surgery performed by Dr. Bolyard.

4. Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning April 18, 2020 and continuing through a date yet to be determined.

5. Claimant earned an average weekly wage of \$501.96. This would entitle her to benefits at the compensation rates of \$335.00 for total disability benefits and \$251.00 for permanent partial disability benefits.

6. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The respondent is a wholesale distributor of automotive parts and accessories for whom claimant has worked for a little more than two years. On April 17, 2020, claimant was working as a shipping clerk. Claimant would take orders that had been pulled by other employees, check the order, box the order, place a shipping label on the box, and then take the box to a postal bin.

Claimant testified that on Friday, April 17, 2020, she was carrying some small boxes to be placed in the postal bin when she lost her balance and "when I stepped back,

I stumbled backwards and caught myself with my left knee or my left foot and crushed through a box.” Claimant testified that she did not fall or grab anything, but simply stumbled. She further testified that she did not immediately realize that she had injured her left knee. Instead, she testified that her knee felt a little sore and strained. She believed that she would be able to rest over the weekend and return to work on Monday as normal.

Claimant testified that she went home following her shift on Friday and put ice on her knee which was sore and stiff. She also took some Ibuprofen. Claimant testified that on Saturday, after a full day of icing her knee and taking Ibuprofen and keeping it elevated, her knee continued to worsen. As a result, she sought medical treatment at the Mercy emergency room.

Medical records indicate that claimant was evaluated by Dr. Christopher Bell at Mercy ER on April 18, 2020. Dr. Bell diagnosed claimant’s condition as an internal derangement of the left knee following a twisting knee injury the day before. Dr. Bell noted that his examination revealed a significant amount of soft tissue swelling in the left knee area. Claimant was treated with a knee immobilizer, crutches were recommended, and claimant was referred to Dr. Smith in orthopedics for an evaluation. In addition, claimant was also given Hydrocodone.

Claimant testified that on Sunday, April 19, she sent her doctor’s note from the emergency room to her supervisor, Gary Sharp. She further testified that on Monday, April 20, she was unable to get up and bear weight on her left leg. She called the respondent and was instructed to seek medical treatment at Occupational Medicine.

The medical records contain a report from Dr. Clark at Mercy Clinic Occupational

Medicine dated April 21, 2020. Dr. Clark diagnosed claimant's condition as a sprain of the lateral collateral ligament and a sprain of the anterior cruciate ligament. Dr. Clark treated claimant with medication and indicated that she was limited to sedentary duty. Dr. Clark also instructed claimant to wear her knee brace and he ordered an MRI scan.

Claimant underwent an MRI scan of the left knee on May 7, 2020. The Impression of the MRI scan is as follows:

Large and complex joint effusion may represent infectious inflammatory process. Consider sampling joint fluid for further evaluation. No gross internal derangement. Mild medial marrow edema type changes across the joint could be posttraumatic. This may include a partial tear between the meniscus and medial collateral ligament. Possible red marrow conversion and correlate with hematocrit levels.

Following her MRI scan, Dr. Clark referred claimant for an evaluation by an orthopedic surgeon and she was evaluated by Dr. Bolyard on May 28, 2020. Dr. Bolyard reviewed claimant's MRI scan and noted that claimant had left knee effusion and a possible medial meniscus tear. Dr. Bolyard aspirated claimant's knee and gave claimant medication.

In a report dated June 9, 2020, Dr. Bolyard noted that claimant's left knee continued to be problematic with swelling and medially based pain. Dr. Bolyard opined that an arthroscopic procedure was claimant's only option at that point.

Dr. Bolyard performed surgery on claimant's left knee on June 17, 2020. Dr. Bolyard's operative report of that date contains the following notation:

The medial and lateral compartments were inspected. There was minimal cartilage change though present, grade 2 at most. A small area of grade 3 changes in the center of the medial

tibial plateau. There was some edge fraying of the medial meniscus that was debrided with the shaver, some edge fraying of the lateral meniscus femorally. To probing, they were all stable. The ACL and PCL were intact.

Claimant has filed this claim contending that she suffered a compensable injury to her left knee on April 17, 2020. She seeks payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury to her left knee on April 17, 2020 when she tripped and stumbled. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) 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 establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on April 17, 2020. First, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her

employment and that her injury was caused by a specific incident identifiable by time and place of occurrence. As previously noted, claimant testified that her injury occurred when she was carrying small boxes to place in a postal bin and she tripped and stumbled backwards. Respondents submitted into evidence a video of this incident. While the incident depicted on the video is not “dramatic”, it does nevertheless show the claimant tripping over a box that is located in the floor and stumbling forward (not backwards as claimant testified). However, it should be noted that claimant testified that she did not fall to the ground or grab anything, but merely stumbled onto her left foot. In short, my review of the video indicates that an incident did in fact take place wherein claimant tripped and stumbled on April 17, 2020.

There is no evidence that claimant was suffering from any issues involving her left knee prior to April 17. Furthermore, claimant sought medical treatment for left knee problems the day after this incident and gave a history of injury consistent with her testimony.

Based upon the claimant’s testimony which I find to be credible, the video showing an incident on April 17, the lack of any evidence establishing any prior left knee problems, as well as a history to the treating physicians consistent with her testimony, I find that claimant has proven that her injury arose out of and in the course of her employment and that it was caused by a specific incident identifiable by time and place of occurrence.

I also find that claimant’s injury caused internal or external harm to her body that required medical services and that she has offered medical evidence supported by objective findings. As previously noted, claimant sought medical treatment on April 18 from the Mercy emergency room. Dr. Bell’s physical examination of claimant’s left knee

on that date revealed a significant amount of soft tissue swelling around her left knee. In addition, x-rays of claimant's left knee likewise revealed swelling and effusion. This effusion was also seen on claimant's MRI scan of May 6, 2020. Finally, Dr. Bolyard's operative report notes edge fraying of claimant's medial meniscus and edge fraying of the lateral meniscus. These constitute objective findings and proof that the injury caused internal or external harm to claimant's body that required medical services. In this case, claimant's injury resulted in surgery performed by Dr. Bolyard.

In short, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on April 17, 2020.

I also find that claimant is entitled to payment of all reasonable and necessary medical treatment provided in connection with her compensable injury. This includes the surgery performed by Dr. Bolyard.

I also find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning April 18, 2020 and continuing through a date yet to be determined. The injury to claimant's left knee is a scheduled injury. An employee who has suffered a scheduled injury is entitled to receive temporary total disability benefits during the healing period or until she returns to work, irregardless of whether she is totally incapacitated from earning wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). The healing period continues until the claimant is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W. 2d 457 (1994). Here, there is no indication from the medical records that claimant has reached the end of her healing period. Likewise, claimant has not returned to work for the

respondent or any other employer since the date of her injury. When claimant sought medical treatment from the Mercy emergency room on April 18, 2020 she was given a knee immobilizer and instructed to use crutches. Claimant also received a work note indicating that she could return to work with no weight bearing until she was cleared by orthopedics. Claimant provided a copy of this note to the respondent and on Monday was sent by respondent to Dr. Clark. Dr. Clark on April 21 indicated that claimant could perform sedentary duty only and that she could not drive or operate machinery while taking her pain medication. Dr. Clark again confirmed that claimant could only perform sedentary type work in his report of May 12, 2020. The last medical report addressing claimant's ability to work is Dr. Bolyard's letter dated June 26, 2020 in which he indicates that claimant could only perform sit down type work.

Claimant testified that she provided the sedentary duty notes to the respondent and asked if there was anything she could do. Claimant testified that in response the respondent indicated that it had no work available for her at that time. Claimant was placed on FMLA leave and was subsequently terminated by respondent when her FMLA was exhausted.

Although claimant testified that she applied for unemployment compensation benefits, she did not receive those benefits and although she has looked for work she has been unsuccessful. Thus, claimant has not returned to work.

Based upon the fact that claimant remains within her healing period and she has not returned to work for respondent or any other employer, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning April 18, 2020 and continuing through a date yet to be

determined.

The final issue for consideration involves claimant's compensation rate. Claimant testified that she believed she was earning \$12.75 per hour at the time she was injured. Claimant also contends that she was required to be available for work for 40 hours per week. Thus, claimant contends that her compensation rates should be based upon a 40-hour work week at the rate of \$12.75 per hour. This would result in an average weekly wage of \$510.00 per week.

Respondent submitted into evidence a copy of claimant's wage records for the past 52 weeks. Those records indicate that claimant earned wages in the amount of \$26,101.68. Dividing that figure by 52 weeks results in an average weekly wage of \$501.96. This translates to a compensation rate of \$335.00 for total disability benefits and \$251.00 for permanent partial disability benefits.

Claimant acknowledged on cross examination that her work hours depended on the volume of orders received by the respondent. Likewise, testifying on behalf of the respondent was Eric Ogden, the respondent's controller. Ogden testified that individuals who work in the respondent's warehouse as shipping clerks are not guaranteed 40 hours of work per week. Instead, Ogden testified that the amount of work depends upon the number of orders received by the respondent.

A.C.A. §11-9-518 states that compensation is to be computed on the average weekly wage earned by the employee under the contract of hire enforced at the time of the accident. That statute also indicates that if exceptional circumstances are present the average weekly wage may be determined by a method that is fair and just to all parties. I find based upon the evidence presented that claimant's average weekly wage should be

determined based upon the wages actually earned. As previously noted, over the past 52 weeks claimant earned total wages of \$26,101.68 which results in an average weekly wage of \$501.96. Based upon the average weekly wage of \$501.96, I find that claimant is entitled to payment of benefits based upon the rates of \$335.00 for total disability benefits and \$251.00 for permanent partial disability benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on April 17, 2020. Claimant is entitled to payment of all reasonable and necessary medical benefits provided in connection with her compensable injury. This includes surgery performed by Dr. Bolyard. Claimant has also proven that she is entitled to temporary total disability benefits beginning April 18, 2020 and continuing through a date yet to be determined. Those benefits are to be paid based upon an average weekly wage of \$501.96, which translates to a rate of \$335.00 for total disability benefits and \$251.00 for permanent partial disability benefits. Respondent has controverted claimant's entitlement to compensation benefits.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

Respondents are responsible for paying the court reporter's charges for

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preparation of the hearing transcript in the amount of \$361.40.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE