

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. H302270**

MARITZA SANDOVAL, Employee	CLAIMANT
TYSON FOODS, INC., Employer	RESPONDENT
TYNET CORP., Carrier	RESPONDENT

**OPINION FILED JANUARY 3, 2024**

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by JEREMY SWEARINGEN, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On October 10, 2023, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 22, 2023, and a Pre-hearing Order was filed on May 23, 2023. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 this claim.
2. The relationship of employee-employer-carrier existed between the parties on November 1, 2022.
3. The respondents have controverted the claim in its entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to her left knee on or about November 1, 2022.
2. Whether Claimant is entitled to medical treatment for her left knee injury.
3. Respondents raise lack of notice as a defense in that the April 6, 2023, AR-C was the first notice of any alleged work-related injury.

The claimant's contentions are as follows:

“Claimant contends she injured her left knee while walking downstairs and slipping on the bottom step. She contends she is entitled to medical treatment for her left knee. Claimant reserves all other issues.”

The respondents' contentions are as follows:

“A. Respondent contends that the Claimant has offered no proof at all that she sustained a compensable left knee injury. She has provided no objective findings of injury.

B. Respondent contends that its first notice that the Claimant was alleging a compensable left knee injury was the AR-C filed by the Claimant's attorney on April 6, 2023, which was received by the Respondent on April 10, 2023. Thus, even if the claim were somehow found to be compensable, Respondent would not be liable for any benefits incurred or accrued before the date such notice was received.

C. The Claimant has not specified what medical she is seeking.”

The claimant in this matter is a 53-year-old female who alleges that she sustained a compensable left knee injury while employed by the respondent. The claimant has asserted that she does not know the date that she injured her left knee but believed that it occurred in November of 2022. The claimant worked for the respondent in a chicken processing facility in a department called “flat pack.” On direct examination, the claimant described her alleged left knee injury as follows:

Q And what happened to cause the injury to your left knee?

A I was working where I had to go up a ladder to check on production.

Q And when you say a ladder, can you describe the ladder for us.

A It is a fixed ladder that goes really high, but I mean really high up. So when I was coming down the ladder, I didn't see one or two of the rungs and I slipped. I didn't fall, I slipped, and that is when I felt the pain in my leg.

Q So how did you land?

A No. There are things on the side that I grabbed onto, so I had just slid.

Q Okay. And so when you slid down, how were your legs when you hit the floor?

A So the right one – the right leg was like out and the left one was pushing in (indicating).

THE COURT: I noticed the Claimant made hand gestures during her testimony. Ms. Brooks, I would ask you to try to get her to be more descriptive of how her legs actually were. As you are well aware, we cannot –

MS. BROOKS: See her.

THE COURT: -- see her doing that in her transcript.

MS. BROOKS: Okay.

Q [BY MS. BROOKS]: So you slipped and you did not fall; correct.

A No, I didn't fall.

Q So what about the slipping hurt your left knee?

A When I slipped, it did hurt me here (indicating), but it wasn't hurting all that much.

Q When you say here, you were gesturing to your left knee; is that correct?

A Yes.

Q Okay. So earlier when I asked you how you contacted the floor, you were making gestures with your hands, which is okay, but we also have to have the words to explain what you meant.

So you appeared to me to have your left arm out straight. What did you mean by that?

A So the force hit my shin, so that is how it hurt my knee was the force against my shin when I slipped down the ladder.

Q Okay. Now, when we are talking about a ladder, is this a ladder like you put on the outside of your house to climb to your roof or is this a ladder like stairs inside your house that you get to the second floor?

A So it is like an inside step stool, but it is a very tall one, so it has like 20 steps on it.

Q And why were you climbing that, those stairs?

A I had to be up there for two hours checking on the production making sure that there was no plastic or foreign material in it.

Q Okay. So was it necessary to come back down those stairs to get to any other area of the plant?

A Yes.

I note that the parties in this matter both acknowledge that the claimant, who is Spanish speaking, required the use of an interpreter and, as such, there was some difficulty in translation of the word “stairs” as it appears to be “ladders” at some points in testimony. However, both parties agree that the claimant was descending stairs and not a ladder. That discussion is found in the hearing transcript on page 29.

The claimant testified that she was going down the stairs when her left knee injury occurred and had planned to go on her lunch break; however, after her injury she went to the nurse's office to report her injury instead of going on her lunch break. Following is the claimant's testimony about her reporting of her injury to the in-house nurse at the respondent's facility:

Q And when you went to the nurses station, what did you do?

A I told her that I had slipped coming down those steps and that my knee was hurting, but that it wasn't a really big deal.

Q And what did she do for you?

A "Come back tomorrow. We will see if you get any worse."

Q And did you go back the next day?

A Yes, because I was feeling worse.

Q And what happened then?

A She told me, "Well, let's just give it some time because we are already treating your arms."

And I said, "All right," but I didn't realize that my knee was going to get worse.

Q Did you ever discuss your knee with the nurse again?

A Yes. I kept going back.

Q Did you ever get any treatment for that left knee?

A No.

I note that the claimant was receiving treatment for her bilateral forearms in January of 2023, according to the respondent's nursing notes. The claimant contends that she was receiving treatment prior to January 2023 for her forearms as well.

The claimant also testified that she reported her injury to Mario Salinas, her supervisor, and he told her “I can’t do anything for you. Go to the nurse.” The claimant testified that she went to the nurse’s station several times and to her supervisor again complaining of her left knee injury. It was the claimant’s testimony that she received no treatment from the respondent for her left knee and was not provided paperwork to fill out regarding her left knee injury.

On January 13, 2023, the claimant was seen at River Valley Primary Care by APRN Zachary McBroom. Following is a portion of that medical record:

History of Present Illness

Pt presents to the clinic with c/o right hip pain and left knee pain x 3 weeks. Pt primarily speaks Spanish; translator assisted in visit. Pt reports stepping down off ladder 3 week prior which is what precipitated her current sx; denies falling from ladder or stepping to the ground in an odd manner. Denies any specific trauma to areas of concern. Reports she has been taking ibuprofen with mild relief; denies trying any other tx modalities. Reports similar sx x 3 years prior which she f/u with a chiropractor for and was successfully tx, denies going to chiropractor for current sx. Denies issues with ADLs or work; denies overt issues with gait. Denies any other sx or complaints.

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Visit Diagnosis

Primary right hip pain  
Acute pain of left knee

The claimant was seen at Elite Chiropractic Center by Jim Schilling, DC, on January 25, 2023. Following is a portion of that medical report from her visit:

Subjective Complaint

Mr. Sandoval was examined today to determine progress with the current treatment plan.

Maritza reported the following new condition today:

5. Posterior Left Knee

Constant posterior left knee pain. She considers this complaint as moderate to severe and rated the pain as an 8 on a scale of 0 to 10 with 10 being the worst. The pain is described as sharp, throbbing, shooting and deep and is radiating into the left calf. The pain is

increased by prolonged standing, prolonged walking, walking downstairs, walking upstairs and weight bearing.

It has been 2 years since Ms. Sandoval's last treatment visit. The patient currently complains of acute left knee pain. Pain is well localized to the posterior and lateral compartments of the knee. Patient reports of a slip/fall at workplace. The patient states that she slipped and missed two steps with majority of the weight landing on the left leg (fully extended) during the fall. The patient states that the pain was immediate. I did observe significant amount of edema on the posterolateral portion of the left knee. The patient was quite guarded and altered gait was noted due to painful range of motion. The patient states the pain is at its worst with weight-bearing position and somewhat alleviated when resting. Orthopedic examination was performed. Positive findings include McMurray test, Apley's grind test, the Thessaly's test. These findings indicate the patient may have meniscus injury and subsequent Baker's cyst of the knee.

The claimant was provided with chiropractic treatment for her left knee injury during that visit.

The claimant continued to treat for her left knee injury with Elite Chiropractic, which included visits on January 30, 2023, February 1, 2023, February 3, 2023, February 6, 2023, and February 7, 2023.

On February 8, 2023, the claimant was seen by APRN Erica Fowler at River Valley Primary Care. Following is a portion of that medical record:

**HPI:**

Maritza A. Sandoval 52 year old female with PMH that includes prediabetes, HLP, GERD, and asthma, who presents with complaints of left knee pain that has been ongoing for the last three months. She states that she was walking down the stairs and landed incorrectly, which immediately provoked the pain. She subsequently started ibuprofen and has been following up with her chiropractor. More recently, she states that her chiropractor took xrays of her left knee and recommended that she have an MRI conducted. She was seen by another provider one month ago and started on Naproxen, along with a Medrol dospak, which provided minimal relief. She continues to ambulate with a cane for support and utilizes a knee brace intermittently.

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Assessment/Plan:

1. Acute pain of left knee

Refilled Naproxen. Encouraged to rest, ice, and elevate knee when possible, and to wear knee brace when ambulating.

-naproxen (NAPROSYN) 500 mg tablet: Take 1 Tablet by mouth 2 (two) times daily with a meal. Dispense: 60 Tablet; Refill: 2.

-Referral to Orthopedic Surgery

The claimant was referred to an orthopedic surgeon at that time.

On March 8, 2023, the claimant was seen at Mercy Clinic River Valley by PA Lauren Wahlmeier. Following are portions of that medical record:

HPI:

Patient is a 52-year-old female here for evaluation of her left knee. She states that she had an injury a couple months ago when she was going up and down some stairs. She states that this pain is primarily at the medial aspect of the knee. This pain is worse when going from a standing to a sitting position. She states that she feels a catch in the knee with certain motions. She denies any numbness or tingling the leg or foot. No radicular neurologic symptoms. No fever chills or constitutional symptoms.

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Assessment/Plan:

Patient is here with a left knee sprain with possible medial meniscal tear. Plan for corticosteroid injection today as well as a referral to physical therapy. Return to clinic in 3 months for follow-up.

The claimant received an injection in her left knee at that time.

On May 5, 2023, the claimant underwent an MRI of the left knee at Prime Medical Imaging. Following are the Impressions from the diagnostic report from that MRI by Dr. Leo Drolshagen.

Impression:

1. Bone bruises lateral femoral condyle with undisplaced osteochondral lesions. Cartilaginous loss lateral compartment knee joint space.



2. Bone bruise distal femur at intercondylar notch at the anterior cruciate ligament insertion. Partial tear anterior cruciate ligament.
3. Knee effusion, with scattered bone bruises as described above.

The claimant in this matter has asked the Commission to determine whether she sustained a compensable injury to her left knee on or about November 1, 2022. It is the claimant's burden to prove the compensability of her alleged left knee injury. The claimant does not recall the date that the left knee injury she claims occurred, but she does recall the specific incident and the time of day that specific incident occurred, doing so consistently in deposition testimony, hearing testimony, and conversations with medical providers.

The claimant is able to show objective medical findings regarding her alleged left knee injury from her MRI performed on May 5, 2023. The claimant must also prove a causal connection between those objective medical findings and the injury she alleges. The respondents here contend that the claimant did not report a work-related injury to her left knee until she filed an AR-C form on April 6, 2023. The claimant testified, and I find that she did so truthfully, reporting her injury immediately following the occurrence to her supervisor and then reporting to the nurse's station. The respondent has introduced documents into evidence in the form of nursing notes from its facility nursing staff. The notes introduced first discuss a "knee condition" on March 6, 2023. That knee condition is described in the nurse's note as a "personal" knee condition. However, a few days later, a nurse's note from March 10, 2023, states:

Received return to work note from TM with restrictions stating, "desk duty downstairs preferred." No positions available on the floor, but TM has restrictions set by work comp doctor where she doesn't have to go up or down any steps. If this becomes a problem TM will be advised to get an updated note regarding her knee from the doctor.

In the claimant's hearing testimony and deposition testimony, the claimant testified that she reported her injury to Mario Salinas, her supervisor, and to a nurse at the nurse's station. In fact, the claimant provided a photograph of the nurse she reported her left knee injury to at her deposition which was taken on July 27, 2023, and introduced into evidence in this matter, to the respondent's attorney. I find the claimant's testimony to be credible about her reporting of the injury. The only evidence that disputes that testimony is the absence of records from the respondent showing that it occurred, and a nursing note about the claimant's personal knee condition.

The claimant's testimony was consistent to medical providers about how her injury occurred, and her left knee MRI certainly shows derangement that one would expect from the incident she describes.

The claimant has proven by a preponderance of the evidence that she sustained a compensable left knee injury in November of 2022 while employed by the respondent. I note that the respondent also contended that the claimant was not performing employment services at the time of her compensable injury. The claimant was going to a lunch break at that time; however, the claimant's job required her to climb stairs to a high point in the facility. The claimant was certainly performing employment services for the respondent while she was descending down from a height her job duties required her to be at, as the claimant had not even returned to the production floor level when her injury occurred.

The claimant has asked the Commission to determine if she is entitled to medical treatment for her compensable left knee injury. After a review of the medical records submitted into evidence, I find that the treatment provided to the claimant in evidence is reasonable necessary treatment for her compensable left knee injury. The claimant is entitled to

reimbursement for any out-of-pocket expenses and to reasonable necessary medical treatment for her compensable left knee injury.

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 witness and to observe her 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 the pre-hearing conference conducted on May 22, 2023, and contained in a Pre-hearing Order filed May 23, 2023, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her left knee on or about November 1, 2022.

3. The claimant has proven by a preponderance of the evidence that she is entitled to medical treatment for her left knee injury, including reimbursement for out-of-pocket expenses for medical treatment submitted into evidence in this matter regarding her left knee.

4. The respondent failed to prove its lack of notice defense in that I find that the claimant reported her injury immediately after it occurred to her supervisor and then to a nurse at the respondent's nursing facility.

**ORDER**

The respondents shall pay for reasonable necessary medical treatment regarding the claimant's compensable left knee injury, including out-of-pocket expenses for treatment previously provided to the claimant that was introduced into the record in this matter.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded “only on the amount of compensation for indemnity benefits controverted and awarded.” Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant’s attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

**IT IS SO ORDERED.**

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**HONORABLE ERIC PAUL WELLS**  
**ADMINISTRATIVE LAW JUDGE**