

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: H108614

**MICHAEL WHITE,
EMPLOYEE**

CLAIMANT

**PULASKI COUNTY SPECIAL SCHOOL DISTRICT,
EMPLOYER**

RESPONDENT

**ARKANSAS SCHOOL BOARDS ASSOCIATION,
WCT**

RESPONDENT

OPINION FILED APRIL 27, 2023

Hearing held before ADMINISTRATIVE LAW JUDGE CHANDRA L. BLACK in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas.

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

Statement of the Case

On February 15, 2023, the above-captioned claim came on for a hearing in Little Rock, Arkansas. Previously, a prehearing telephone conference was conducted in matter on November 30, 2022, from which a Prehearing Order was filed on that same day. A copy of said order and the parties' responsive filings have been marked as Commission's Exhibit 1, and made a part of the record.

Stipulations

During the prehearing telephone conference, and/or hearing the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. That the employee-employer-insurance carrier relationship existed at all relevant times, including on or about July 26, 2021,¹ when the Claimant sustained a compensable left knee injury in the course and scope of his employment with the Pulaski County Special School District.
3. The Claimant's average weekly wage on the day of his accidental injury was \$769.53, which was sufficient to entitle him to corresponding compensation rates of \$513.00 per week for temporary total disability (TTD) compensation, and \$385.00 a week for permanent partial disability (PPD) benefits.
4. The Claimant was released to return to work at maximum medical improvement (MMI) on March 29, 2022, by Dr. Eric Gordon, with a 2% PPD rating to his left lower extremity/knee.
5. The Respondents have controverted this claim for a right knee injury in its entirety.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Issues

By agreement of the parties, the issues to be litigated at the hearing included the following:

1. Whether the Claimant sustained a compensable injury to his right knee as a result of his July 26, 2021 work-related accidental injury.
2. Whether the Claimant is entitled to the medical treatment of record provided by Dr. Ethan Schock that has been incurred for his right knee, and treatment going forward, including the recommendation for right knee arthroscopy.

¹ Although at various times during the hearing, the parties referred to the date of injury as being July 27, 2021, they have now stipulated that the correct date of the Claimant's accidental injury is July 26, 2021. (T. 31)

Contentions

The respective contentions of the parties are as follows:

Claimant:

The Claimant contends:

- (a) That he sustained work injuries to his right knee on or about July 26, 2021;
- (b) That he is entitled to medical treatment relative to his work injuries; and
- (c) That the benefits set forth above have been controverted and thus, the undersigned counsel is entitled to maximum statutory attorney's fees.

Respondents:

The Claimant did not sustain a compensable injury to his right knee within the course and scope of his employment. Any complaints and/or need for treatment pre-existed any claimed work injury and are not the responsibility of the Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on my review of the evidentiary record, to include the aforementioned documentary evidence, other matters properly before the Commission, and after having had an opportunity to hear the testimony of the Claimant and 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. I hereby accept the above-mentioned proposed stipulations as fact.
3. The Claimant failed to prove by a preponderance of the credible evidence that he sustained a compensable injury to his right knee during his work-related incident of July 26, 2021.

4. The issue pertaining to medical treatment for the Claimant's right knee is moot and will not be addressed herein because of the above Finding/Conclusion No. 3.
5. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Summary of Evidence

Mr. Michael White (referred to herein as the "Claimant") was the sole witness to testify at the hearing.

The record consists of the February 15, 2023, hearing transcript and the following exhibits: Specifically, Commission's Exhibit 1 includes the above referenced documents; the Respondent's Medical Exhibit includes one hundred seventy-one pages and it has been marked as Respondents' Exhibit 1; and Respondents' Non-Medical Exhibits, has been marked as Respondents' Exhibit 2, consisting of four numbered pages was offered into evidence without objection.

Testimony

Michael White/the Claimant

The Claimant is fifty-four years old. He confirmed that he continues to be employed by the Pulaski County Special District and is assigned to work at Harris Elementary School. However, on July 26, 2021, the Claimant worked at Daisy Bates Elementary School. While working at Daisy Bates, the Claimant performed employment duties of a Pre-K paraprofessional. However, the Claimant essentially testified that during the summer months, he took on part-time jobs for the school district preparing the school building for the new school year. The Claimant basically testified that he helped with the stripping and waxing of the floors, moving furniture around, cleaning and maintenance of the school, and various other laborious tasks.

On July 26, 2021, the Claimant was helping with a strip and wax of some of the classroom floors. According to the Claimant, he was teamed up with a female coworker. The Claimant testified that he went to get the water to rinse the floor and had not been made aware by anyone that another coworker had spilled stripper wax on the floor. According to the Claimant, when he stepped in the hallway, he slipped and suddenly fell to the floor. Specifically, the Claimant explained that he “went down really quick and hit the floor real hard.” The Claimant agreed that his legs went out from under him, causing him to fall and land on his backside.

The Claimant confirmed that he reported his injury to management, and it was accepted as a compensable workers’ compensation claim. He testified that it took about four weeks before he heard from the workers’ compensation adjuster. The adjuster referred the Claimant to Concentra, located in southwest Little Rock. The Claimant testified that they took x-rays of his lower back and left knee. Additionally, the Claimant maintained that the medical staff at Concentra started him on physical therapy for both knees and his lower back. The Claimant further maintained that as they performed physical therapy on his left knee, it became more painful, and he could hardly walk. As a result, they sent the Claimant to Conway for an MRI of his left knee.

Regarding the Claimant’s right knee, he asserted:

Q: And I would like for you to continue, but before we do, just go back. When you very first went to Concentra, did you inform the doctors at Concentra that you had a problem with your right knee?

A: Yes.

Q: Okay. You included that in the body parts that you needed help with?

A: Yes.

Q: Okay. All right. You went to - - and you had an MRI on your right knee.

A: Yes, sir.

Q: Okay.

A: No, it was on the left knee.

(T. 15-16)

Ultimately, the Claimant had surgery on his left knee, and several months of physical therapy. The Claimant confirmed that his left knee condition has resolved, and Dr. Eric Gordon assigned him a 2% rating. He further confirmed that the Respondents accepted and paid the 2% rating.

Regarding his right knee, the Claimant testified that he first received treatment for his right knee, after he returned back to work. However, the Claimant maintained that previously, he had told Dr. Gordon that he was having issues with it probably before being released from care. Specifically, the Claimant further maintained that his reporting to Dr. Gordon occurred after his surgery, but before he got released from care.

The Claimant testified that while Arkansas Ortho (the Claimant is referring to OrthoArkansas) was doing therapy on both his knees, they concentrated mostly on the knee that he had surgery on, which was his left knee. Again, the Claimant maintained that he informed Dr. Gordon before being released from his care that he was having some issues. Upon being questioned as to whether Dr. Gordon refused to treat his right knee, the Claimant did not give an audible response.

Hence, the Claimant's attorney next asked him how he came under the care of Dr. Ethan Schock for his knee. He explained that he told his primary care doctor, Dr. Richland,² about what was going on and she suggested several doctors for him to call and see if they could get him in to

² The medical records show that the Claimant's primary care physician is Dr. Alison Richardson, instead of Dr. Richland.

check his right knee. The Claimant testified that he called Dr. Schock and he agreed to see him. Dr. Schock sent the Claimant for an MRI of his right knee. At that point, they discovered that the Claimant had a tear in his right knee.

The Claimant confirmed that he continues to experience problems with his right knee. He described his knee pain as being a throbbing pain, associated with some swelling from time to time. According to the Claimant, he limps due to the swelling in his right knee. The Claimant testified that he paid his medical bills for his visits with Dr. Schock through his regular health insurance, which is Health Advantage. He confirmed that Dr. Schock has recommended arthroscopy to repair his right knee. The Claimant admitted that he wishes to have the surgery done on his right knee.

On cross-examination, the Claimant confirmed that he has seen the report from Concentra dated August 20, 2021, which does not mention a right knee injury. At that time, the Claimant's diagnosis was left knee pain. The Claimant maintained that he told them at Concentra about his right knee issues during that initial visit of August 20 because they performed physical therapy on both knees during that time. However, the Claimant had not started physical therapy during that time. Per the August 20, 2021, office visit, the Claimant reported a history of: "Fall at work. Slipped on stripper. Twisted left knee and hit buttocks. Continued left knee pain."

Under further cross-examination, the Claimant testified:

Q: There's no mention of any right knee issue, is there?

A: I - - mean, I'm trying to - - I'm just trying to follow you when say there's no mention.

(T. 21)

The Claimant was given a copy of page 1 of the Respondents' exhibit for him to review.

Next, counsel for the Respondents asked the Claimant if there was any mention of right knee pain problems or issues on the document. Before providing counsel with a direct answer to his question, the Claimant started to explain rather than giving a direct answer. However, after being prompted by counsel to answer the question, the Claimant admitted that the document does not mention any right knee problems or issues.

Under further questioning, the Claimant admitted that the only thing they took an x-ray of at Concentra was of his left knee. He admitted that the MRI ordered by Concentra was for his left knee. The Claimant was shown a copy of page 12 of the Respondents' exhibit, which is a letter from the adjuster to Dr. Carle, who is the doctor that the Claimant saw at Concentra. Per this letter, the adjuster mentions only the Claimant's left knee. He confirmed that said letter does not mention any problems with his right knee.

With respect to when his symptoms started, the Claimant testified that he started having problems with throbbing and swelling in his right knee before he was released by Dr. Gordon, and while he was still undergoing physical therapy. The Claimant testified that he mentioned his right knee to Dr. Gordon several weeks before being released from his care.

According to page 161 of the Respondents' exhibit, Dr. Gordon declared the Claimant to be at maximum medical improvement (MMI) and gave him a 2% impairment to his lower extremity on March 29, 2022. The Claimant maintained that he mentioned the throbbing and swelling of his right knee to Dr. Gordon sometime in February of 2022.

The Claimant testified:

Q: Okay. So up to that point had you had any issues with your right knee?

A: I had and they were doing therapy on both knees, as I said, at Concentra and when I went to Arkansas Ortho, and why it's not documented, I can't -- I can't vouch for that.

(T. 25)

He confirmed that he went to Matthew Brown for physical therapy. The medical records of the Claimant's physical therapy visits start on page 54 of the Respondents' exhibit, and they continue through page 133. However, according to these medical records, the only thing they treated in physical therapy was the Claimant's left knee. The Claimant testified that he does not know why there is no documentation of any problem with his right knee in any of his physical therapy records. Also, the Claimant testified that he does not have reason to account for their lack of documentation.

Next, counsel for the Respondents questioned the Claimant about an incident involving his right knee, which he mentioned to his PCP, Dr. Richardson. He confirmed that Dr. Richardson is the doctor he saw complaining of right knee problems after his release by Dr. Gordon. The Claimant admitted that he mentioned an incident to Dr. Richardson concerning him having hit his knee on the bed. However, the Claimant continued to deny having injured his knee during this incident and continued to maintain that he injured his knee during his work-related fall of July 2021. The Claimant specifically stated that he does not recall which knee he injured during the incident at his home.

On page 171 of the Respondents' exhibit is a note authored by Dr. Ethan Schock. It reads: "Dr. Richardson's note of July 18, 2022 describes a new injury to his right knee which occurred when he struck some furniture in his home in a separate incident." The Claimant admitted that he told Dr. Richardson he bumped his knee on his bed. However, he stated that he discussed with his

doctor about the fall that he had at work and the surgery on his left knee. Dr. Schock stated in his notes, "In none of Dr. Gordon's medical records and his subsequent visits and documentation, is there is no mention of any injury to the right knee on July 27, 2021." The Claimant testified that he does not know why he said that because they were doing therapy on both his knees and lower back and then not documenting what they were doing. Also, the Claimant testified that he could not give an account of why the Concentra records are completely blank when it comes to any type of injury to his right knee, or why Dr. Gordon's records do not show a right knee injury. According to the Claimant, Dr. Gordon met with him several times before releasing him, and he touched and felt around his right knee. Therefore, the Claimant maintained that he would have assumed that Dr. Gordon would have done what Dr. Schock did and had an MRI done prior to releasing him.

The Claimant testified:

Q: So Concentra's records are wrong; Dr. Gordon's records are wrong; the physical therapist's records are wrong, if we're to believe you that you told them of the right knee problems, correct?

A: Correct.

Q: They're all wrong?

A: Correct.

(T. 28)

Medical Evidence

The Claimant was evaluated by Dr. Ethan Schock on June 16, 2022 for consideration of his right knee. Dr. Schock noted that the Claimant had a history of a previous left knee arthroscopy performed by his partner, Dr. Gordon, in a work-related injury last year. The Claimant reported right knee pain associated with weightbearing and walking, but also at rest. However, per these

clinical notes, the Claimant gave a duration of right knee problems for four months. Dr. Schock ordered an MRI of the Claimant's right knee to further evaluate what may represent a medial meniscus tear versus a more distal/pes anserinus related process.

An MRI was performed of the Claimant's right knee on June 24, 2022, with the following impression:

1. Complex undersurface tearing of the medial meniscus is centered at the body posterior horn junction with mild adjacent reactive bone marrow edema of the medial tibial plateau.
2. Prominent area of high-grade partial-thickness cartilage loss at the posterior medial aspect weightbearing medial femoral condyle with mild to moderate degenerative subchondral T2 hyperintense signal.
3. Small area of high-grade partial-thickness cartilage fissuring at the patella.
4. Probable mild edema at the superolateral aspect of Hoffa's fat pad, which can be seen with patellofemoral maltracking.

On August 24, 2022, Dr. Schock authored a medical report.

I have reviewed available records in the Ortho Arkansas EMR, provided x-rays, provided x-rays of the right knee dated November 2, 2021 as well as a family practice note with Dr. Allison Richardson on July 18, 2022.

Patient does have a history of a work-related injury on July 27, 2021 to his left knee which was treated by my partner, Dr. Eric Gordon with knee arthroscopy on October 21, 2021.

In none of Dr. Gordon's medical records, and my subsequent visits and documentation is there any mention of injury to the right knee on July 27, 2021.

Dr. Richardson's note from July 18, 2022 describes a "new injury to the right knee which occurred when he struck some furniture in his home in a separate incident."

Considering these sources of information and lack of documentation or previous mention of right knee involvement with the July 27, 2021 work-related incident, I believe there is no/0% causal relationship to his present right knee meniscal and degenerative arthritis knee issues. This opinion is rendered within a reasonable degree of medical certainty.

My review of the Non-Medical Exhibit records of evidence shows that on July 27, 2021,

the Claimant signed a Form AR-N wherein he asserted injuries to his back and shoulders as a result of his work-related fall on July 26, 2021.

The Claimant's attorney filed a Form AR-C with the Commission on July 11, 2022. Per this document, the counsel for the Claimant wrote "Claimant injured both knees on July 26, 2021.

Adjudication

A. Compensability/Right Knee

It is undisputed that the Claimant sustained an admittedly compensable injury to his left knee on July 26, 2021, when he slipped and fell on a wet floor at Daisy Bates Elementary School while he and other coworkers were in the process of stripping and waxing the floors. The Respondents accepted the claim for a left knee injury and have paid benefits to and on behalf of the Claimant, including a 2% impairment rating as assessed by his treating physician, Dr. Gordon.

However, the Claimant now asserts that he injured his right knee during his slip and fall accident on July 26, 2021. Hence, the crucial issue for determination is whether the Claimant sustained an injury to his right knee as a result of his work-related slip and fall incident on July 26, 2021.

In Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2012), "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). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102 (16)(A)(i).

The employee has the burden of proving by a preponderance of evidence that he sustained a compensable injury. Ark. Code Ann. §11-9102(4)(E)(i). 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), citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant has failed to prove by a preponderance of the credible evidence that he sustained a compensable right knee injury on July 26, 2021, during his work-related fall.

Although I am convinced the Claimant is a hardworking employee, I found his testimony to be less than forthcoming and incredulous concerning his alleged right knee injury. Here, the Claimant's testimony was marked by numerous inconsistencies and rebutted by the documentary evidence of record, particularly, the medical records. As a result, due to all the surrounding circumstances outlined below, I cannot find that the Claimant has proven by a preponderance of the evidence a causal connection between his workplace incident of July 26, 2021, and his current right knee condition.

Specifically, the Claimant gave conflicting and confusing testimony concerning his alleged reporting of a right injury to medical professionals due to his work-related injury of July 2021. In fact, what is most telling is the fact the Claimant's testimony is not corroborated by the medical records. It is highly improbable that multiple doctors and medical professionals failed to document the Claimant's report of a right knee injury. Likewise, the mechanism of the Claimant's fall is not consistent with a right knee injury in either of his varied accounts of the incident.

In that regard, during the hearing the Claimant testified that he landed on his backside. However, when the Claimant provided a history of his workplace incident during his first visit to Concentra on August 20, 2021, the Claimant reported that he “twisted his left knee and hit his buttocks.” There is absolutely no mention of a right knee injury. The Claimant’s first medically documented treatment of record for consideration of his right knee is not until a year after his work-related injury of July 26, 2021. However, the Claimant continued to maintain that he made initial reports of an injury to his right knee to several treating medical professionals despite the fact there is absolutely no documentation of an alleged right knee injury in any of the contemporaneous medical reports as discussed above. The Claimant was unable to explain why multiple medical staff persons would omit from their medical notes his report of a right knee injury. It is noteworthy that a day after his work-related incident, the Claimant reported on the Form AR-N that he sustained injuries to his “shoulders and low back.” In fact, there is absolutely no mention whatsoever of an injury to either of the Claimant’s knees.

Nevertheless, although on cross-examination, the Claimant denied he injured his right knee in a separate incident at his home after his work-related incident. However, the medical records show that on July 18, 2022, the Claimant reported to his PCP, Dr. Richardson, a subsequent incident with his right knee wherein he struck his knee on some furniture at his home. What is most telling is the fact that the Claimant admitted to use of his personal health insurance to pay for the treatment relating to his right knee.

More importantly, there is no probative evidence whatsoever, demonstrating or even suggesting that the Claimant injured his right knee during his work incident of July 26, 2021. Likewise, the diagnostic tests (namely, the MRI) of record demonstrate significant pre-existing abnormalities of the right knee that are degenerative in nature.

On August 24, 2022, Dr. Ethan Schock opined that due to the lack of documentation of a right knee injury by Dr. Gordon, the report of a new injury by Dr. Richardson in a separate incident at his home, and his degenerative arthritic knee issues, there is a zero percent causal relationship to the Claimant's present right knee problems and his work injury of July 26, 2021. This opinion was rendered within a reasonable degree of medical certainty. There are no expert opinions to the contrary.

To summarize, I am not persuaded that the Claimant injured his right knee during his July 26, 2021 work-related fall due to the following: Considering the lack of any documented complaint of a right knee injury despite the Claimant having been evaluated by multiple medical professionals; that there is no medically documented report of an injury to his right knee until almost after a year of his injury; the expert opinion of Dr. Schock of there being no causal connection of his present knee condition to his work-related incident; there being no expert medical opinion or probative evidence to the contrary; the fact that the Claimant struck his right knee on furniture at his home following his work-related fall; the mechanism of his fall; the fact that he used his personal health insurance to pay for treatment on his right knee treatment with Dr. Schock; and because there are significant degenerative abnormalities of the Claimant's right knee demonstrated on the MRI of June 2022, for which the surgical intervention is geared toward repairing. I am aware that in workers' compensation law, employment circumstances that aggravate pre-existing conditions are compensable. However, taking into consideration all the other probative evidence demonstrating otherwise, I do not find that to be the case here.

Hence, for all the reasons set forth above, I am convinced that it would require conjecture and speculation to causally link the Claimant's current right knee complaints to his workplace

injury of July 26, 2021. Conjecture and speculation cannot supply the place of proof. *Dena Construction Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979).

Under these circumstances, I am compelled to find that the Claimant failed to prove by a preponderance of the evidence that there is a causal connection between his July 26, 2021 work-related fall and the abnormalities demonstrated on the June 2022 MRI of his right knee, for which surgical intervention has been recommended by Dr. Schock.

Therefore, based on all of the foregoing evidence, I find that the Claimant failed to prove by a preponderance of the evidence that he sustained a compensable injury to his right knee, during and in the course of his employment with the respondent-employer during his July 26, 2021, work-related slip and fall.

B. Remaining Issue

Because the Claimant failed to prove he sustained a compensable right knee injury on July 26, 2021, the other issue pertaining to medical treatment for his right knee has been rendered moot and not discussed herein. Accordingly, this claim for a right knee injury is respectfully denied and dismissed in its entirety.

ORDER

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

IT IS SO ORDERED.

HON. CHANDRA L. BLACK
ADMINISTRATIVE LAW JUDGE

