

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H304348

MARK KING, Employee	CLAIMANT
RECON GROUP, INC., Employer	RESPONDENT
TRAVELERS INDEMNITY CO., Carrier	RESPONDENT

AMENDED OPINION FILED MAY 7, 2024

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

Claimant represented by LAURI THOMAS, Attorney at Law, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On February 6, 2024, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on October 30, 2023, and a Pre-hearing Order was filed on October 31, 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 June 27, 2023.
3. The respondents have controverted the claim in its entirety.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$391.00 for temporary total disability benefits and \$293.00 for permanent partial disability benefits.

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

1. Whether Claimant sustained a compensable injury to his left knee on or about June 27, 2023.
2. Whether Claimant is entitled to medical treatment for his compensable left knee injury.
3. Whether Claimant is entitled to temporary total disability benefits from November 1, 2023, to November 28, 2023.
4. Whether Claimant's attorney is entitled to an attorney's fee.

The claimant's contentions are as follows:

“Claimant sustained a compensable injury while working for Respondent on or about 6/27/23. At that time, claimant was in the course and scope of his employment with Respondent when a cart hit his shin, causing him to fall onto another cart, twisting his knee in the process.

On 6/30/23 Mr. King reported to Northwest Medical Center with complaints of left knee pain that had not subsided since he twisted his knee at work. After performing test and imaging, Dr. Burton at Northwest Medical Center suspected an internal left lateral meniscal injury. She recommended that he follow up with orthopedics.

On 7/10/23 Mr. King reported to Dr. Maline at the Agility Center with complaints of left knee pain. The doctor determined his symptoms were consistent with a meniscal tear and requested an MRI of Claimant's left knee.

The Respondents have denied Claimant's right to further medical treatment. Mr. King was unable to delay treatment any further. On 9/19/23 Mr. King had an MRI of his left knee which showed longitudinal horizontal type tear of the medial meniscus. After

reviewing the MRI, Dr. Maline recommended surgery to repair the tear.”

The respondents’ contentions are as follows:

“Respondents contend that the claimant did not sustain a compensable injury within the course and scope of his employment.”

The claimant in this matter is a 57-year-old male who alleges to have sustained a compensable injury to his left knee on June 27, 2023. The claimant’s job duties for the respondent included taking products off a line, entering them into a computer system, and putting those products away. On direct examination the claimant described the incident in which he alleges to have suffered a compensable left knee injury. That incident occurred about 10 to 15 minutes prior to the end of the workday. A video has been introduced into evidence on a flash drive marked as Claimant’s Exhibit 3. The claimant’s testimony regarding that incident follows:

Q And tell us about that day.

A Okay. Well, the day was almost over and at the end of the day, we always get a push of product on the line. I was storing stuff into the computer. I emptied a bin of product and then I went to get another bin of product off the line. Someone had placed a flat cart, which stands about this tall (indicating), behind me and I didn’t see it. I turned around, walked right into it hitting my right shin on it. Fell forward. Used my left leg to brace myself, almost falling. I did everything I could not to fall.

Q Was it painful?

A Very painful.

Q Did you report it to anyone?

A I reported it to my supervisor, Jamie Deans, immediately.

Q And after you reported it to Ms. Deans, what happened?

A They sat me down over at Jamie's desk. Put some ice on it. Since it was the end of the day, they decided that they would wait until the next morning to do a report incident on it.

Q Okay. So from the time you got injured until you clocked out, how long was that time frame?

A Ten, maybe 15 minutes.

Q Okay. So when you clocked out, what did you do after this?

A I went straight home.

The claimant was also asked about his alleged left knee injury on cross examination as follows:

Q Okay. Now, you turned around from entering some product into the computer and somebody had put this cart behind you; is that right?

A Correct.

Q Okay. I believe it was a blue cart?

A Correct.

Q Okay. And when you turned around, you described that it was about six inches off the floor?

A Correct.

Q And you struck your right shin on that cart which would have been six inches above the floor?

A Correct.

Q So right above where your ankle is?

A Right.

Q Right in that shin area?

A Correct.

Q Okay. Now, you didn't have any pain at that point in your left knee; did you?

A No. The pain was so severe in my shin, that is all I could feel.

Q Okay. Now, you didn't have any pain that you knew of in your left leg at all at the time involving your knee; correct?

A No, I had not. Not that I felt.

Q Okay. Hadn't noticed any issues with your left knee when you left that day; did you?

A No, I did not.

Q Didn't notice any swelling or bruising or issues with your left knee at all when you left work that day; correct?

A No.

Q Is that correct?

A That is correct.

The claimant testified that he immediately reported the incident to a supervisor, Jamie Deans. The claimant was placed at Ms. Deans' desk and was given ice to apply to his right shin. Holly Killbreth, who is the respondent's safety coordinator, was also present when the claimant received the ice for his right shin. Ms. Killbreth was called as a witness by the respondent and gave direct examination testimony about her time with the claimant as follows:

Q Okay. So were you called to the location where Mr. King and Ms. Deans would have been?

A Correct.

Q What did you do and what did you observe at the time you were called?

A When we first got there, we initially asked what happened and he had told us that he had hit his shin, so we just observed a scrape towards the bottom part of his shin by his ankle.

Q Okay.

A And it was red.

Q When you said his shin, are you talking about the left or the right?

A The right.

Q The right. Okay. Did he describe any other complaints or problems at that time?

A No.

The claimant testified that he went home after work and took a nap on his couch. The claimant also works part-time as a dance instructor and was scheduled to give a dance class that night. The claimant gave direct examination testimony about his activities after work on June 27, 2023, as follows:

Q Okay. So when you clocked out, what did you do after this?

A I went straight home.

Q And what did you do when you went home?

A I laid on the couch and took a nap.

Q You didn't do any physical activities?

A No, ma'am. I was hurting too much.

Q At what point in time, originally you – what was your original injury when you hit the flat cart?

A I had a contusion on my shin about right here (indicating) and it was – it was a little red. You could tell that it broke the skin, but it didn't bleed.

Q Okay. So at what point in time did you realize that your knee was hurting?

A When I woke up a couple of hours later on the couch, my knee was sore and it had started to swell.

Q Are you a dance instructor?

A I am.

Q And did you have a dance class that night?

A I did.

Q Did you teach it?

A I tried.

Q Is there a reason why you went to the dance class if your knee was swollen?

A I get paid and I need the money.

Q Okay. When you say you tried to teach the class, what did you do?

A I basically got up to try to demonstrate the first move and I couldn't do that, so I asked Ms. Elzey to help me with the class.

Q And is Ms. Elzey Missy?

A Yes, ma'am.

The claimant called Missy Elzey as a witness in this matter. Ms. Elzey testified on direct examination that she was in the claimant's dance class on June 27, 2023. She further testified:

Q Did you notice if there was anything off about that night's dance class?

A Yeah, right away. I mean we were just sitting and chatting and then when he first got up, he kind of winced and did kind one of those, you know. And I was like, "Oh, what is wrong?" I first thought what is wrong because when you are trying to dance, you know, and he said, "I hurt myself at work," so

Q Did he describe how he hurt himself?

A Yeah, because I asked like what happened, so he just said he tripped – I always get this all mixed up, but he tripped on something and hit his shin. And then in trying to correct that, he kind of twisted his knee and the fallout from it, so it just sounded like a mess, you know.

Q So at that night's class, he said he hurt his shin and hurt his knee?

A Uh-huh.

Q And it was your understanding that that happened at work?

A Yes.

Q Was it your understanding it happened that day?

A Uh-huh. Yeah.

Q Were you able to see his knees and his shin?

A He was showing me because I was like, you know, what is happening. His knee looked swollen. And like the other, his shin where he had hit it on something was kind of dented, red, bruised. That was just starting since it was that day, so it didn't look so good, so

Q Was he able to teach the class?

A Huh-uh. No. He got up and that is when I first noticed something was wrong because he got up to start and he kind of, you know, was hobbling a little bit. So he just sort of said, "Well, if you can do this, I will kind of tell you what to do," so I had to wing it. You know, I can wing it.

Q So you took over the class?

A Yeah.

The claimant also called Sherri Swedlund as a witness. Ms. Swedlund was also in the claimant's dance class on June 27, 2023, and gave the following direct examination testimony:

Q When Mr. King arrived, did you notice anything off about Mr. King?

A He came in limping.

Q Okay. Which leg was he limping on?

A Left.

Q Did you notice anything – did he have shorts on?

A Yes.

Q Were you able to see any injury?

A He had a knee brace on his left knee and then on his right leg, he had like a scratch, like some kind of mark or something on his left leg – or right leg.

Q And when you say knee brace, you mean like an ACE bandage?

A No. It was more like a black thing, like a knee – yeah.

Q Okay. Did he complain about being in any pain?

A Yes.

Q And where was he complaining the pain was coming from?

MR. WADE: Your Honor, I object. This is hearsay. It is not offered by a party-opponent. It is offered to bolster the testimony of the Claimant and it doesn't meet the exceptions to the hearsay rule.

THE COURT: Overruled.

Q [BY MS. THOMAS]: Did he complain of any pain?

A Yes.

Q And where did he indicate it was?

A On his knee.

Q Did he teach class that night?

A No.

Q Who taught class that night?

A He stood there and he didn't teach – like dance. He just stood there and said, hey, do this and we just kind of followed his verbal instruction.

Q And is that normally how he teaches class?

A No.

Q How does he normally teach class?

A He dances with us. Like he will dance with us and show us everything.

Q But he could not that night?

A No.

The claimant returned to work the next day and testified that he reported that morning to his supervisor, Jamie Deans, that he had injured his left knee in the incident the day before. Later that day the claimant was provided a Health and Safety Incident Report to sign. That report was completed by Ms. Killbreth, the respondent's safety coordinator. That report is found at Respondents' Exhibits 2. The report makes no mention of the claimant's left knee, only his right shin. However, on direct examination Ms. Killbreth testified that all the information in that report was from the time of the incident on June 27, 2023, not information gained after June 27, 2023. Ms. Killbreth gave the report to the claimant to review and sign on June 28, 2023. The claimant did sign the report but testified on cross examination as follows:

Q Now, were you given the opportunity to review that report before you signed it?

A I looked it over. I didn't really read it. I just looked it over.

Q Okay. so you had the chance to look at those six pages of documents at the time you signed it; correct?

A Yes.

Q Okay.

A I did assume that it would be added to, the knee injury, because I did – when I got to work that morning, I immediately told my supervisor, Jamie Deans, that my knee was hurting and I believe I hurt it the day before at work.

Q Did you make any suggestion to Ms. Killbreth or indicate to her any other injury than the shin, which is identified in that report?

A I do believe I told Ms. Killbreth that my knee was hurting as well.

As made clear in cross examination, the claimant never asked to amend the report he signed on June 28, 2023. On cross examination Ms. Killbreth was asked about speaking to the claimant's supervisor and protocol for the claimant to report his left knee as follows:

Q When he filled out – when you brought that report, it was already filled out; correct?

A Correct. We typed it up.

Q Is Ms. Deans' signature on that paper?

A No, it is not.

Q Had you spoken with Jamie Deans before you gave that to Mr. King?

A No, I did not.

Q So if he reported it to his supervisor, you would not have been aware of the knee. If you hadn't spoken to her and she didn't sign the paperwork, the only person he reported it to, you hadn't spoken with?

A I had not spoke to her, no.

Q And would it be proper procedure or protocol for him to tell his supervisor?

A Yes.

Q Okay. He doesn't work in HR; does he?

A No.

Q So if he reported it to his supervisor, would it be safe for him to assume that you would take care of the appropriate paperwork?

A I can't answer what he is going to assume.

Q Should you take care of the appropriate paperwork and not him?

A The HR lady would have taken care of it. She would come to me when the HR lady is made aware of it.

The claimant was asked on direct examination about medical treatment for his left knee as follows:

Q At some point in time, did you decide you needed medical treatment?

A Yes. It was two and a half days afterwards, right after lunch my knee was hurting really bad, so I when to my supervisor, Jamie Deans, and told her I need to go to the doctor.

Q And what did Ms. Deans tell you?

A She sent me to Jolene, our HR representative, and Jolene gave me a list of hospitals or clinics that I could go to to be seen about my injury.

Q Okay. And which one did you go to?

A I went to Northwest Medical Center.

Q And what test did they run?

A They ran an X-ray.

Q Did they give you any follow-up instructions after you went home?

A They wanted me to set an appointment with an orthopedic doctor, Dr. Maline.

Q Did they give you any kind of instructions on how to treat your knee?

MR. WADE: Your Honor, I am going to object. That is hearsay. The medical records are in evidence.

THE COURT: I think he can say if they gave him instructions or not.

MR. WADE: Well, if he describes the instructions.

THE COURT: Well, I think the question was did they give you any instructions, so I will overrule your objection.

MR. WADE: Thank you, Your Honor.

THE WITNESS: Yes, they did.

Q [BY MS. THOMAS]: Did you have any restrictions placed on you after you went to Northwest Medical Center about working?

A Yes. I had a knee brace and I had to be careful about how much I lift and things that I could do.

Q Okay. You said that Northwest Medical Center referred you to Dr. Maline?

A Yes, ma'am.

On June 30, 2023, the claimant was seen at Northwest Medical Center by PA Chelsea Burton. Following is a portion of that medical record:

History of Present Illness

56-year-old male reported history of meniscal repair right leg approximately 5 years ago presents the emergency department for 3 days of progressive pain in his left anterior/lateral and posterior knee and his left buttock. Symptoms began 3 days ago after he turned around while at work and someone had put a flat rolling cart behind him and he hit his right shin causing him to stumble and he jumped on top of the flat cart. At that time he had not noticed that he had injured his left buttock or knee but later than evening while teaching dance class he began developing some pain in his left knee. Since then he has difficulty bearing weight on the left lower extremity due to pain at the knee and buttock and unable to fully straighten or flex the left knee secondary to swelling posteriorly. Patient reporting this feels similar to his meniscal injury previously. He denies lower extremity numbness, tingling, discoloration, back pain.

Diagnosis

Acute pain of left hip (ICD10-CM M25.552, Discharge, Emergency medicine, Medical)

Acute pain of left knee (ICD10-CM M25.562, Discharge, Emergency medicine, Medical)

Acute left-sided back pain with sciatica (ICD10-CM M54.42. Discharge, Emergency medicine, Medical)

On July 10, 2023, the claimant was seen by DO Michael Maline at Agility Orthopedics. I note that the medical record provides information on its first page about the claimant's insurance provider and states, "Med Workers' Comp – Travelers." Additionally, that medical record states:

HPI

Notes:

Patient presents to the office today for pain in the left knee. He was at work when he went to turn around to grab another item to scan in when he tripped over a low cart that some one had left behind him. Once he turned and tripped on the cart when his right shin, he was going to fall forward he landed with his right foot on the cart, the cart then started to move and he tried to jump off of the cart and twisted his knee in the process.

Assessment/Plan

His outside images were reviewed independently and show joint space well maintained, no fracture noted. His exam is consistent with meniscal tear. Recommend MRI to evaluate.

On September 19, 2023, the claimant underwent an MRI of his left knee at MANA Medical Associates. Following is a portion of that diagnostic report authored by Dr. Tommy Hinton:

Impression:

1. There is a longitudinal horizontal-type tear involving the posterior horn and body of the medial meniscus.
2. There is suprapatellar knee joint effusion.
3. There is infrapatellar subcutaneous edema.

On October 10, 2023, the claimant is again seen by DO Maline. I note the first page of that medical report also indicates an insurance provider which now states, “Med Primary – CIGNA,” a change from DO Maline’s July 10, 2023, medical record which stated, “Med Workers’ Comp – Travelers.” At that visit DO Maline recommends arthroscopic surgery for a torn medial meniscus in the claimant’s left knee.

On November 1, 2023, the claimant underwent surgical intervention at the hands of DO Maline. Following is a portion of that operative report:

PREOPERATIVE DIAGNOSIS: Posterior horn tear medial meniscus, left knee.

PREOPERATIVE DIAGNOSIS: Posterior horn tear medial meniscus, left knee.

PROCEDURE PERFORMED: Left knee arthroscopy with partial medial meniscectomy.

The claimant has the burden to prove his alleged left knee injury of June 27, 2023, compensable. 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.

The claimant can clearly prove the existence of objective medical findings of derangement in the form of a left knee meniscus tear from his left knee MRI dated September 19, 2023, and DO Maline's operative report of November 1, 2023.

The credibility of witnesses and the weight to be given to their testimony are matters solely within the province of the Commission. *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). There were four witnesses in this matter and I believe the credibility of all the witnesses to be high.

The claimant's testimony about how his injury occurred is supported by the video evidence in this matter. I believe the claimant to be truthful about the timing of his left knee pain and swelling occurring after his nap. The claimant's testimony regarding his left knee problems prior to his dance class is supported by the testimony of Ms. Swedlund and Ms. Elzey. I find both to be credible witnesses in this matter. I will note some differences in their testimony that was highlighted on cross examination. However, both testified that his complaints began before he danced and the differences and deficits of their testimony seem reasonable particularly given that this was a random dance class for each of these individuals on June 27, 2023, and they did not testify until February 6, 2024.

The report compiled by Ms. Killbreth does not mention the claimant's left knee, only his right shin. However, she testified all of that information was gathered before the claimant alleges

his pain in the left knee to have begun. Ms. Killbreth did not talk to Ms. Deans, the claimant's supervisor, on June 28, 2023, when he testified that he first complained of left knee injury before she had the claimant sign the report. The claimant's testimony that he did report his left knee injury to the respondent is supported in medical evidence. DO Maline's July 10, 2023, visit with the claimant was clearly billed through the respondent's workers' compensation insurance policy. I believe the claimant's testimony true that the next day he reported his left knee injury and that he was offered or provided medical treatment sometime thereafter. The claimant is able to prove a causal connection between his objective medical findings regarding his left knee and the incident that occurred on June 27, 2023. The claimant is able to prove that he sustained a compensable left knee injury on June 27, 2023, as he has alleged.

The claimant has asked the Commission to determine if he is entitled to medical treatment for his compensable left knee injury. Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries, Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996).

After a review of the medical records submitted into evidence in this matter, I find that the medical treatment shown in those records and provided to the claimant is reasonable and necessary medical treatment for his compensable left knee injury and that the respondents shall

be responsible for the payment of that treatment, including the claimant's out-of-pocket medical costs.

The claimant has asked the Commission to determine if he is entitled to temporary total disability benefits from November 1, 2023, to November 28, 2023. A claimant who suffers a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during their healing period or until they return to work, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

A medical record found at Claimant's Exhibit 1, page 34, indicates that the claimant may return to work on November 29, 2023. Given that the claimant's surgical intervention was on November 1, 2023, and that he was removed from work until November 29, 2023, the claimant was clearly within his healing period due to his compensable injury and taken off work as he was temporarily totally disabled until he was able to return to work per DO Maline's record on November 29, 2023. The claimant is able to prove his entitlement to temporary total disability benefits from November 1, 2023, to November 28, 2023.

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 the pre-hearing conference conducted on October 30, 2023, and contained in a Pre-hearing Order filed October 31, 2023, are hereby accepted as fact.

2. The claimant is able to prove by a preponderance of the evidence that he sustained a compensable injury to his left knee on or about June 27, 2023.

3. The claimant is able to prove by a preponderance of the evidence that is entitled to medical treatment for his compensable left knee injury, including any out-of-pocket expenses incurred by the claimant in this matter.

4. The claimant is able to prove by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 1, 2023, to November 28, 2023.

5. The claimant is able to prove by a preponderance of the evidence that his attorney is entitled to an attorney's fee in this matter.

ORDER

The respondents shall be responsible for the costs associated with reasonable and necessary medical treatment regarding the claimant's left knee injury which occurred on June 27, 2023, including reimbursement to the claimant for out-of-pocket medical expenses.

The respondents shall pay the claimant temporary disability benefits from November 1, 2023, to November 28, 2023.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

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.

HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE