



5 of 8 DOCUMENTS

ROSSI VALENCIA, Claimant

v.

HORIZON CNC PRODUCTS, AMERICAN INTERSTATE INSURANCE COMPANY
& RELIANCE NATIONAL INSURANCE COMPANY/SOUTH CAROLINA INSUR-
ANCE GUARANTY ASSOCIATION, Carrier/Defendants

W.C.C. NO.: 9914171; 0027276

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BEFORE THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION

2002 SC Wrk. Comp. LEXIS 158

August 5, 2002, Decided

August 7, 2002, Filed

CORE TERMS: claimant, knee, surgery, right knee, recommended, replacement, medical treatment, carrier, orthopedic surgeon, deposition, treating, average weekly wage, conclusions of law, pain, supervisor, scheduled, maximum, doctor, admits, onset, door, course of treatment, left knee, compensable, aggravation, aggravated, carrying

HISTORY: Hearing Date: January 16, 2002

Greenville County

JUDGES: HON. LISA D. CHAVIS, COMMISSIONER, SOUTH CAROLINA WORKERS COMPENSATION COMMISSION**OPINIONBY:** LISA D. CHAVIS**OPINION:**

[*1]

DECISION & AWARD

A hearing was held January 16, 2002 in Greenville County. Claimant appeared at the hearing and was represented by **Robert P. Foster**, Foster & Foster, LLP, of Greenville. The Defendant, American Interstate Insurance Company, appeared through its attorney, F. Earl Ellis, Jr., Ellis, Lawhorn and Sims, PA and Defendant, Reliance National Insurance Company/South Carolina Insurance Guaranty Association appeared through its attorney, Russell T. Infinger, Nexson, Pruitt, Jacobs and Pollard, LLP.

The following were submitted by the parties under the APA:

APA SUBMISSIONS

Submitted by Claimant:

APA #	Physician/Document	Date	Pages
1	Accident/Injury Report	3-98	1-2
2	Thomas B. Eison, M.D.	5-21-99 --	

APA #	Physician/Document	Date	Pages
	Mountain View Orthopaedics, P.A.	9-20-00	3-7

Submitted by Defendant, American Interstate Insurance Company:

Dr. Thomas Eison - Mountain view Orthopaedics 5-21-99 - 9-20-00 Pages 1-4

Submitted by Reliance National Insurance Company/South Carolina Insurance Guaranty Association:

Barry L. Awe, DC (We Care Chiropractic)	06-16-98	3 pages
St. Francis Hospital	06-07-99	2 pages

STATEMENT OF THE CASE

Claimant contends she is entitled to further medical treatment for injury to her right knee May 17, 1999 and subsequent aggravation thereof on September 20, 2000, by reason of a separate accident, including surgery as recommended by her treating orthopedic physician, Dr. Thomas B. Eison, Mountain View Orthopaedics of Greer, South Carolina. She seeks causally related medical expenses and reimbursement of any out-of-pocket expenses for medical care and prescriptions. Claimant contends she has not reached maximum medical improvement. Claimant further contends injury to her left knee as a result of these two (2) accidents as well.

Defendant, Reliance National, admits claimant sustained injury to her knees on September 20, 2000, admits that plaintiff had prior knee injuries that required surgery before the accident on September 20, 2000.

Defendant, American Interstate Insurance admits claimant sustained work related injury to her right knee and contends [*3] that the need for surgery resulted from an accident dated March, 1998, or in the alternative, the accident of September 20, 2000.

EVIDENCE OF THE CASE

Claimant testified she is 40 years old and nearly completed high school in 1981, having worked at Horizon CNC Products Company for the previous six (6) years, as a sander and assembler of doors and cabinets at Horizon's manufacturing plant in Greer, South Carolina. Claimant is married to Johnny Valencia and he works at Horizon CNC Products Company as well. Her date of birth is 5-16-61. Claimant is from Puerto Rico and has been in the United States for approximately ten (10) years. Claimant has three (3) children, the oldest being twenty (20) and the youngest being sixteen (16) years of age. Prior to the 1998 accident at Horizon CNC Products, claimant denied any problems with either of her knees. She described an accident that occurred in 1998 when she fell at work while carrying a door for her supervisor. She testified her supervisor sent her to a chiropractor and she continued to work through May 17, 1999, when she was carrying a stack of rack doors to the press room when she hurt both of her knees. She described the immediate [*4] onset of pain and reported same to her supervisor, Paul Gallant. She went to her doctor and was eventually referred to Dr. Thomas B. Eison, who first saw her approximately four (4) days after the accident on May 21, 1999. She complained of problems in both of her knees, but the right knee was the one giving her the most trouble. Dr. Eison performed surgery August 9, 1999 and followed claimant as she returned to work in October, 1999 and discussed with the physician the need for a knee replacement, which according to the physician, was recommended. Before the surgery could be approved and scheduled, plaintiff sustained her second accident of September 20, 2000, and again was treated by Dr. Eison, for same. Claimant described the facts of that accident. Claimant was discussing work related issues with her employer at the place of employment, when a co-worker named David Halles, snuck up behind her and struck the back of both of her knees, causing her to have immediate onset of excruciating pain and which led her to Dr. Eison, later that day.

Dr. Eison has not seen claimant since September 20, 2000, the day of the last accident and at the time of the hearing, was awaiting decision by [*5] the commission as to whether or not surgery for her right knee would be approved so that same could be scheduled. Dr. Eison also treated claimant for injury to her left knee as a result of the September 20, 2000 accident and intends to resume a course of treatment with same if and when approved by the commission, according to his deposition.

Dr. Eison gave two depositions, both of which have been submitted as evidence. The first deposition was taken August 29, 2001 and the second taken March 5, 2002. Dr. Eison's opinions as expressed in his deposition, are that the plaintiff had a pre-existing condition in her right knee before the May 17, 1999 accident and that the May 17, 1999 ac-

cident aggravated the condition for which he performed surgery and recommended further surgery including a knee replacement. Before the surgery could be scheduled and approved, claimant suffered her September 20, 2000 accident which further aggravated the claimant's right knee, according to the doctor. Dr. Eison still recommended the knee replacement surgery following the September 20, 2000 accident. Dr. Eison ruled out the September 20th accident as being the cause of the arthritis for which he recommended [*6] the knee replacement inasmuch as he had already recommended a knee replacement prior to the September 20, 2000 injury. The doctor testified that because claimant did not speak fluent English, it made it difficult to get an accurate history.

The defendants called Dave Hallas, the co-employee that caused the September 20, 2000 accident as a witness. Mr. Hallas testified he knew claimant had problems with her knees before the September 20, 2000 accident and had seen her limping at work. Making simply a terrible error of judgment, he caused the September 20, 2000 accident which he admitted caused claimant the immediate onset of pain which did continue thereafter.

Claimant testified she continued to work for Horizon CNC Products and was undergoing and experiencing tremendous pain in her right knee, sometimes to the point of tears. She described the limitations she has in terms of mobility and the activities she is restricted from performing. For instance, she testified that her husband has to help her get in and out of the bathtub as she is unable to do so on her own. She also displayed for the commission, the parties and their attorneys, her right knee and leg which has an obvious deformity [*7] or bow outward to the right side, which is obvious to even a casual viewer. Claimant testified she desperately wanted to have her knee replaced to alleviate the constant and unrelenting pain and became very emotional at the hearing when expressing her desires. She had been laid off by her employer as of the hearing date.

FINDINGS OF FACT

The following findings of fact, to the extent they are deemed conclusions of law, shall act as such:

1. That claimant was an employee of the employer Horizon CNC Products and sustained a compensable accident to her knees on May 17, 1999, while working for Horizon CNC, which was reported to her employer;

2. That claimant was an employee of Horizon CNC Products and sustained a compensable accident to her knees on September 20, 2000, while working for the employer;

3. That claimant's average weekly wage for the May 17, 1999 accident is \$ 404.28 with resulting comp rate of \$ 269.53;

4. That claimant's average weekly wage for the September 20, 2000 accident is \$ 446.85 with resulting compensation rate of \$ 297.91;

5. That the work related injury claimant suffered on September 20, 2000, to her right knee, was an aggravation of the injury and condition [*8] resulting from the May 17, 1999 accident;

6. That the greater weight of the evidence supports a finding that the claimant is in need of and entitled to further medical treatment as outlined and directed by her treating orthopedic surgeon, Dr. Thomas B. Eison, including, but not limited to, knee replacement surgery for claimant's right knee;

7. That Dr. Eison also outlined a projected course of treatment for claimant's left knee in his deposition held March 5, 2002, of which claimant is in need of;

8. That prior to September 20, 2000, claimant was in need of a knee replacement surgery as recommended by her treating orthopedic surgeon, Dr. Thomas B. Eison;

9. That carrier, American Interstate Insurance Company, is the insurer for the employer, Horizon CNC Products, Inc., for the May 17, 1999 accident and is the responsible party for providing further medical treatment as directed by Dr. Thomas B. Eison;

10. Reliance National Insurance Company/South Carolina Insurance Guarantee Association is the insurance carrier for the September 20, 2000 accident;

CONCLUSIONS OF LAW

The following conclusions of law to the extent they are findings of fact, shall be deemed as such.

1. That the [*9] employer/employee relationship existed pursuant to Sections 42-1-30, 140 of the South Carolina Code, on the day of accident, May 17, 1999 and on September 20, 2000;
2. That claimant's average weekly wage for the May 17, 1999 accident is \$ 404.28 with a resulting comp rate of \$ 269.53, pursuant to Section 42-1-40 of the South Carolina Code;
3. That claimant's average weekly wage for the September 20, 2000 accident is \$ 446.85, with resulting comp rate of \$ 297.91, pursuant to Section 42-1-40 of the South Carolina Code;
4. That claimant sustained an injury arising out of and in the course of her employment with the employer on May 17, 1999 and again on September 20, 2000, as that term is defined in Section 42-1-160 of the South Carolina Code;
5. That claimant is entitled to further medical treatment for injuries sustained in these accidents pursuant to Section 42-15-60 of the South Carolina Code, on the grounds that such treatment will, in the opinion of the commission, tend to lessen the period of claimant's disability. This treatment shall be under the direction and as outlined by claimant's treating orthopedic surgeon, Dr. Thomas B. Eison, of Mountainview Orthopaedics, Greer, South [*10] Carolina;
6. That claimant has received injuries to both of her knees in each accident;
7. That claimant has not reached maximum medical improvement with respect to either knee, and is in need of surgery as recommended by Dr. Eison, and follow up care as deemed necessary by him, for which the carrier, American Interstate Insurance Company shall be responsible pursuant to Section 42-15-60 of the South Carolina Code;
8. That based upon the fact that claimant has not reached maximum medical improvement, it is premature to determine what, if any, permanent partial disability claimant has and such issues are to be held in abeyance until a future hearing.

AWARD

Based upon the factual findings and conclusions of law referenced above, it is ORDERED, ADJUDGED & DECREED that:

1. The carrier, American Interstate Insurance Company, the carrier insuring employer for the May 17, 1999 accident, shall pay for medical treatment as outlined by Dr. Thomas B. Eison, orthopedic surgeon;
2. That said carrier shall pay for medical treatment by and as prescribed and recommended by Dr. Eison, until she is released by Dr. Eison or until further order of the commission;
3. That such carrier shall pay [*11] the claimant temporary total benefits for any and all periods of time in which claimant's treating orthopedic surgeon, Dr. Thomas B. Eison, shall keep claimant out of work and shall reimburse claimant the mileage expenses in traveling to and from her treating physician as provided for under South Carolina law;

AND IT IS SO ORDERED.

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI Administrative Proceedings Evidence Witnesses Workers' Compensation & SSDI Compensability Course of Employment General Overview Workers' Compensation & SSDI Compensability Injuries General Overview