

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107729

LEOLA CASTER, EMPLOYEE

CLAIMANT

**HOSPICE FOUNDATION OF
ARKANSAS, EMPLOYER**

RESPONDENT

GALLAGHER BASSETT SERVICES, INC., TPA

RESPONDENT

OPINION FILED NOVEMBER 19, 2003

Hearing before Administrative Law Judge J. Mark White on October 15, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. William C. Frye, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 15, 2003, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on August 26, 2003, and a Prehearing Conference Order was entered that same date. A copy of the August 26, 2003, Prehearing Conference Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Conference Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employer/employee/carrier

relationship existed between the parties on December 28, 2000; that the claimant sustained a compensable injury to her knee on December 28, 2000; that the respondents paid 28 weeks and six days of temporary total disability benefits; that the respondents accepted and paid a 2% rating to the knee as assigned by Dr. Pearce; and that the respondents controverted medical benefits in connection with treatment of the knee subsequent to August 21, 2001.

The parties agreed that the issues to be presented were whether additional medical treatment is reasonable and necessary in connection with the claimant's compensable injury; controversion of additional medical treatment; and an attorney's fee.

The claimant contends that she was referred to Dr. Herbert Hahn through an authorized treating physician; that the respondents moved claimant from Dr. Hahn to Dr. Kenneth Rosenzweig; that Dr. Rosenzweig referred claimant to Dr. Charles Pearce who performed surgery on claimant's left knee; that the claimant continues to suffer symptomatically; that the respondents refuse to authorize further treatment; and that the claimant has returned to Dr. Hahn and is seeking authorization for continued treatment with Dr. Hahn and payment of bills associated with his treatment.

Respondents contend that they have accepted the claimant's injury as

compensable; that the claimant has been treated in the past by various orthopaedic surgeons for complaints of low back and left leg pain into the toes; that the claimant claims she has been told in the past that she needed a total knee replacement; that the claimant was treated for a knee injury by Dr. Charles Pearce, who did arthroscopic surgery; that during surgery, Dr. Pearce removed a loose body that was seen on the MRI; that Dr. Pearce also noted that the claimant had degenerative arthritis of grade III and IV (bone on bone); that Dr. Pearce felt that the claimant had a good recovery from her surgery due to the loose body; that Dr. Pearce also noted that the claimant had significant arthritis of the medial compartment, which he did not feel was caused by the injury; and that Dr. Pearce released the claimant to return to work with a 2% impairment to the left leg rating.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, the hearing transcript, the deposition of Dr. Herbert Hahn, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with ARK. CODE ANN. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The opinion as to causation given by the claimant's treating physician, Dr. Herbert Hahn, is entitled to greater weight than the opposing opinion given by Dr. Charles Pearce.
4. The claimant has proven by a preponderance of the evidence that her continuing left-knee arthritis symptoms are causally connected to her compensable injury of December 28, 2000.
5. The claimant has proven by a preponderance of the evidence that additional medical treatment by Dr. Hahn, including an arthroscopic evaluation, is reasonably necessary in connection with her compensable left-knee injury.
6. The claimant has proven by a preponderance of the evidence that the treatment provided by Dr. Hahn subsequent to the claimant's surgery has been reasonable and necessary.
7. The respondents have controverted additional medical treatment for the claimant's knee subsequent to August 21, 2001.

DISCUSSION

I. History

The claimant worked as a home-health nurse for respondent Hospice Foundation of Arkansas. On December 28, 2000, she sustained a compensable injury to her left knee when she slipped on an icy sidewalk and fell. The respondents accepted her injury as compensable and paid benefits. The claimant was conservatively treated by a variety of doctors, including Dr. Herbert Hahn, until her eventual referral to Dr. Charles Pearce. On May 24, 2001, Dr. Pearce performed arthroscopic surgery to remove a loose body from the left knee.

During surgery, Dr. Pearce visually confirmed that the claimant also suffered from degenerative arthritis of grade III and IV in the medial compartment of her knee, meaning that in at least some areas of her knee there was little to no cartilage separating the bones from the knee joint. Dr. Pearce saw the claimant several more times for follow-up care and then released her on August 10, 2001, with an impairment rating of 2% to the leg.

One month later, the claimant again sought treatment from Dr. Hahn for continued pain and swelling in her left knee. Dr. Hahn treated the claimant conservatively and ordered a bone scan and another MRI. The MRI, performed June 15, 2002, revealed a possible medial meniscal tear and a possible annular tear,

though Dr. Hahn noted in his deposition that these findings could instead reflect the normal and expected results of arthroscopic surgery. Dr. Hahn also acknowledged in his deposition that if any such tears existed, he could not opine as to when those tears took place, what caused them, or whether they were the result of merely degenerative changes. The bone scan, performed August 13, 2002, indicated a possible medial tibial plateau fracture. The claimant continues to see Dr. Hahn for treatment of her left knee, though she has experienced progressively worse problems with her low back, hips and right knee that are unrelated to the claim at bar.

In a May 28, 2003, letter to the claimant's attorney, Dr. Hahn attributed the claimant's present left-knee symptoms to the medial compartment arthritis noted during surgery by Dr. Pearce. In his deposition, Dr. Hahn indicated that another arthroscopic evaluation was needed to determine the exact condition of the arthritis in the claimant's knee and to verify whether there are any meniscal or annular tears.

II. Adjudication

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508 (a). What constitutes reasonably necessary

medical treatment is a question of fact for the Commission. *Hill v. Baptist Medical Center*, 74 Ark. App. 250, 48 S.W.3d 544 (2001). The burden of proof rests on the claimant to prove by a preponderance of the evidence that she is entitled to treatment. *Geo Specialty Chemical v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000).

When an accidental injury aggravates a prior one, the one in whose employ the second injury occurs is liable for all of the consequences naturally flowing from that incident. *Hope Livestock Auction Co. v. Knighton*, 67 Ark. App. 165, 992 S.W.2d 826 (1999). Even if it is demonstrated that a pre-existing condition is also a causal factor, the claimant has met her burden of proof for additional medical treatment so long as she proves that the work injury combined with or aggravated the pre-existing condition to bring about the need for the treatment. *Cox v. Aeroquip*, Workers' Compensation Commission F010474 (Sept. 10, 2003), citing *General Electric Railcar Repair Servs. v. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998).

The present case is complicated by the existence of conflicting opinions from two of the claimant's doctors as to the causation of her left-knee arthritis. The authority of the Commission to resolve conflicting evidence extends to medical evidence, and resolving a conflict is a question of fact. *Chamberlain Group v. Rios*, 45 Ark. App. 144, 871 S.W.2d 595 (1994).

The doctor who performed the claimant's surgery, Dr. Charles Pearce, opined

after the surgery that the arthritis in the claimant's knee "was not as a result, in my opinion, of the injury that she had on 12/28; despite the fact that Ms. Caster says that she had never had knee problems prior to her injury." The claimant's present treating physician, Dr. Herbert Hahn, conversely opined that the arthritis was causally connected to the compensable injury:

In my opinion Ms. Caster's left knee symptoms stem from medial compartment arthritis; however, this can be aggravated by trauma and appears to have advanced rather rapidly following her injury in the fall on ice 12-28-00. The initial xrays showed some medial compartment narrowing with mild arthritic changes on MRI, but Dr. Pearce found full thickness cartilage loss on the medial tibial plateau (Grade IV). This is a matter of opinion, impossible to prove either way, but I submit that there was a mild process in this knee that was subjected to trauma which then rapidly progressed and that the injury is more than 50% responsible for this.

Dr. Hahn reaffirmed and explained this conclusion in detail in his deposition, saying that although grade IV arthritic changes typically occur over a number of years, trauma could bring such changes about within a period of months by splitting or shearing the cartilage off the joint. In such a situation, Dr. Hahn testified, "what was previously a rather gradual arthritic progression can become very rapid." The less severe x-ray and MRI findings regarding the claimant's knee, as compared with the more significant damage observed during surgery, are consistent with Dr. Hahn's description of a rapid, progressive process. Dr. Hahn testified that the

symptoms complained of by the claimant were consistent with the arthritic changes viewed by Dr. Pearce in surgery. Dr. Hahn stated at the end of his deposition that his opinions were given within a reasonable degree of medical certainty.

Comparing the probative value of these two competing opinions, the opinion of Dr. Hahn is entitled to greater weight. Dr. Pearce's opinion is no more than a conclusory statement. Nothing in the context of that particular treatment note, nor in the remainder of the medical evidence, specifically explains the rationale behind Dr. Pearce's conclusion. Dr. Hahn's conclusion, on the other hand, was explained in great detail in his deposition. Dr. Hahn explained why he made his conclusion, and he specified the particular medical findings and mechanisms underlying his conclusion. I therefore find that Dr. Hahn's opinion is the more credible opinion and thus entitled to greater weight.

The causation opinion of Dr. Hahn is sufficient to establish by a preponderance of the evidence that the claimant's continuing left-knee symptoms and arthritis are causally connected to her compensable injury of December 28, 2000. Even if the claimant had pre-existing arthritis or some other pre-existing condition in her knee – a supposition not conclusively supported by the evidence, as discussed below – Dr. Hahn's opinion is sufficient to establish that the claimant's compensable injury combined with or aggravated any such pre-existing condition and brought

on the present need for treatment. Dr. Hahn has recommended additional treatment for the claimant, specifically an arthroscopic evaluation, and nothing in the record suggests that his recommendations are *per se* unreasonable. Therefore, given the Commission's holding in *Cox v. Aeroquip, supra*, I find by a preponderance of the evidence that additional treatment by Dr. Hahn, including an arthroscopic evaluation, is reasonably necessary in connection with the claimant's left-knee compensable injury.

The respondents suggest that the causal connection was broken by pre-existing problems in the claimant's left knee, pointing to an ambiguous statement in the medical record by Dr. William Blankenship. On January 5, 2001, a few days after the compensable injury, the claimant visited Dr. Blankenship, who wrote in his notes, "Twelve years ago she had some problems with this knee and was told then that she needed a total knee replacement." Reliance on Dr. Blankenship's statement is misplaced, for several reasons. Nothing else in the medical evidence documents or mentions any pre-existing problems in the claimant's left knee, and the statement itself is slightly ambiguous as to which knee is being discussed. More to the point, the statement says nothing as to what specific knee problems the claimant allegedly experienced, whether arthritis, a sprain, a tear, or something else. To say that the statement refers to or is evidence of the beginning of arthritic changes in the knee

would be conjecture and speculation.

Though the claimant's testimony at the hearing was somewhat confused, she acknowledged that she had experienced problems with one of her knees in 1991, but she could not remember which knee. She testified that she had experienced no problems or symptoms in her left knee in the years prior to her compensable injury, and nothing in the record contradicts this testimony. Dr. Hahn testified that patients with knee problems are commonly warned that they may require a total knee replacement in the future. I cannot reasonably find that vague, unspecified reports of knee symptoms experienced years prior to the compensable injury are sufficient to break the causal connection between the claimant's compensable injury and the continuing severe arthritis symptoms in her left knee. In making this conclusion, I note that Dr. Hahn specifically testified that he read Dr. Blankenship's report and considered the possibility of a pre-existing condition in reaching his opinion that the claimant's present left-knee arthritis symptoms are attributable to her compensable injury.

Finally, Dr. Hahn admittedly made two ambiguous statements in his deposition that cast doubt on his final conclusion of a causal connection. The first relevant exchange is as follows:

A. And this does hang on certain subtle wordings, that in order to be precise enough, without sort of accidentally

perjuring myself, I would almost have to like see the document to see what the relationship of that question was to the previous question to make sure if I just say yes, that I'm saying yes to the same question over again.

Q. Fair enough. Let me rephrase the question and just ask it a different –

A. So a fresh question?

Q. Absolutely.

A. That would be great.

Q. Okay. Assuming for the purposes of this question that Dr. Blankenship's records are correct and that Ms. Caster was informed 12 years ago that she may ultimately need a total knee replacement, and that she had progressive changes since that date, can you tell me within a reasonable degree of medical certainty whether or not the progressive nature of the arthritic changes supposedly diagnosed 12 years ago caused her knee problem and her grade four changes which were found, or whether it was the result of the December 28th fall?

A. I would not be able to say with a reasonable degree of medical certainty *which it was of those two*. (emphasis added)

The question by respondents' counsel appears to be an "either/or" question with two mutually exclusive answers – either the pre-existing condition caused the knee problems, or the compensable injury caused the knee problems. He implies that the two possibilities cannot both be correct, and Dr. Hahn's use of the phrase "which it was of those two" makes clear he understood the question to be an

either/or question with two mutually exclusive answers. But such a question does not accurately reflect the law; an illness or injury may be caused by *both* pre-existing problems and by a later trauma, and still be compensable. It is not the claimant's burden to prove that her current problems are the sole result of the compensable injury, exclusive of any pre-existing condition. Rather, it is her burden to prove that her compensable injury was aggravated by or combined with any pre-existing condition to produce her present need for treatment. *Cox v. Aeroquip, supra*. That Dr. Hahn was unable or unwilling to pick one exclusive choice from two non-exclusive possibilities does not render suspect his final opinion that the compensable injury combined with or aggravated any pre-existing problems to produce the current need for treatment.

The second ambiguous statement in Dr. Hahn's deposition is as follows:

Q. Can you say in this circumstance, in this case with Ms. Caster, within a reasonable degree of medical certainty whether or not, assuming that Dr. Blankenship's records were correct and that she has had a history of arthritic changes for the last 12 years, can you say within a reasonable degree of medical certainty [sic] whether or not the accident caused her grade four changes or aggravated her grade four changes, or whether or not it was just a natural progression of these changes?

...

A. The way I recollect the wording of the question, if I

assume that Dr. Blankenship's document is correct, then I cannot to a reasonable degree of medical certainty say any of those things that you delineated. I think there were four different possibilities of whether it was the cause, aggravation, but that is predicated on the assumption she had an injury 12 years prior to this –

Q. Fair enough.

A. – or a process that was diagnosed 12 years prior to this.

Contrary to the question by the respondents' counsel, there is no evidence in the record to establish that the claimant "has had a history of arthritic changes for the last 12 years." As noted above, the ambiguous statement by Dr. Blankenship regarding a future total knee replacement offers us no clue as to what specific problems the claimant was experiencing at that earlier time – whether she was experiencing the beginning of arthritic changes culminating in her present condition, or something else. To say that the statement recorded by Dr. Blankenship is a reference specifically to arthritis, or to say that the claimant's arthritic changes began twelve years prior to her compensable injury, is to engage in conjecture and speculation; such cannot substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Dr. Hahn's answer was given in the context of an assumption that the claimant's arthritis began 12 years prior and has steadily progressed since that time – an assumption not established by a preponderance of

the evidence in the record.

Because I find the opinion of Dr. Hahn to be more credible, because I find that the claimant's continuing left-knee arthritis symptoms are causally connected to her compensable injury, and because I find that additional treatment is reasonably necessary, I therefore find by a preponderance of the evidence that the treatment provided by Dr. Hahn subsequent to the claimant's surgery has been reasonable and necessary. I note that nothing in the record suggests that Dr. Hahn's treatment was *per se* unreasonable.

AWARD

The claimant has proven by a preponderance of the evidence that additional treatment is reasonably necessary in connection with the her left-knee compensable injury.

The respondents are hereby directed and ordered to pay for all outstanding medical and related treatment for the claimant's left-knee injury, and the respondents remain liable for continued reasonably necessary medical treatment, including treatment and an arthroscopic evaluation by Dr. Hahn.

The claimant's attorney, Mr. Gary Davis, is hereby awarded the maximum statutory attorney's fee on the entire Award pursuant to ARK. CODE ANN. § 11-9-715

as it applies to injuries incurred prior to July 1, 2001.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to ARK. CODE ANN. § 11-9-809.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge