

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203366

LISA HORTON

CLAIMANT

SRCA BAKER SENIOR ACTIVITY CENTER

RESPONDENT

FREMONT INDUSTRIAL INDEMNITY COMPANY,
INSURANCE CARRIER

CAMBRIDGE INTEGRATED SERVICES GROUP,
TPA

RESPONDENT

OPINION FILED AUGUST 14, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith,
Sebastian County, Arkansas.

Claimant represented by J. RANDOLPH SHOCK, Attorney, Fort Smith, Arkansas.

Respondents represented by BRUCE ANIBLE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on May 20, 2003, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on February 13, 2003. This pre-hearing order set out the stipulations offered by the parties and identified the issues to be litigated and resolved at the present time. By agreement of the parties, the stipulations and issues were amended at the request of the claimant to reflect an alleged injury to her lumbar spine and not injuries to her thoracic and cervical spines. A copy of the pre-hearing order with those amendments noted thereon, was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On May 4, 2001, the relationship of employee-employer carrier-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$103.00 for both total disability and permanent partial disability.
3. On May 4, 2001, the claimant sustained a compensable injury to her left knee.

4. The respondents have paid some of the initial expenses incurred for treatment of her compensable left knee injury and no temporary total disability benefits.
5. The respondents deny any compensable injury to the claimant's lumbar spine and controvert any benefits for this alleged injury.
6. The respondents also controvert any additional benefits for the claimant's left knee complaints.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to her lumbar spine in the specific employment related incident on May 4, 2001.
2. The claimant's entitlement to benefits for this alleged compensable injury including medical expenses and temporary total disability benefits.
3. The claimant's entitlement to additional benefits for her compensable left knee injury, including medical expenses and temporary total disability.
4. Appropriate attorney's fees.

In regard to these issues, the claimant contends that she sustained a compensable injury to her lower back or lumbar spine in the specific employment related fall on May 4, 2001, that she is entitled to the payment of medical expenses associated with this injury, and is entitled to temporary total disability benefits from May 5, 2001 through a date yet to be determined. The claimant further contends that she is also entitled to the payment of additional medical expenses and temporary total disability benefits from May 5, 2001 through a date yet to be determined from her compensable left knee injury.

In regard to these issues, the respondents contend that the claimant did not sustain a compensable low back injury. Per claimant's medical records, her only documented objective finding (muscle spasm) was recorded during a 5/17/02 exam, which was more

than one year following her 5/4/01 injury. This finding is too far removed from the date of her injury to be causally related to her 5/4/01 fall. Claimant's low back complaints are clearly unrelated her 5/4/01 fall. Claimant is not entitled to TTD in relation to either a knee or low back injury. Per claimant's medical records, her only documented period of total disability was for the period of 5/16/01 through 5/21/01 or six days. Per Ark. Code Ann. §11-9-501(a)(1)(1) TTD is not allowed for the first seven days. Claimant's only other medical documentation addressing her ability to work was a 6/4/01 document from Sequoyah Memorial Hospital which placed her on light duty for unspecified reasons during the period of 6/4/01 through 6/6/01. However, claimant failed to notify her employer of her light duty status and otherwise failed to request light duty during this period of time. Claimant established her ability to perform light duty following her 5/4/01 fall given her admission that she performed two weeks of community service one week following her fall. Claimant is not entitled to TTD for the period in which she performed her community service. Claimant alleged that she was terminated by respondent employer. However, claimant's testimony makes clear that she merely assumed that she had been terminated. Furthermore, Ms. Sandra Carter testified that she had no record of claimant being terminated and that she should have been notified of such an occurrence per her employer's policies and procedures. Ms. Carter further testified that light duty was available and would have been provided to claimant had claimant sought light duty. Ms. Carter testified that she had no record of claimant providing her employer with notice of any work restrictions or the need for light duty. Claimant is not entitled to any TTD since she has remained capable of working at all times and suitable work has always been available, although claimant has either not been available due to her community service, incarceration or house arrest or has otherwise not been interested in returning to work. In the alternative, any period of disability established by the claimant was due to her pre-existing back complaints rather than her compensable knee contusion and abrasion.

DISCUSSION

I. ALLEGED LUMBAR INJURY

The first issue to be addressed concerns the claimant's alleged lumbar injury. The claimant contends that she sustained a "compensable injury" to her lumbar spine in the specific employment related incident on May 4, 2001 (the same incident in which she sustained the admittedly compensable injury to her left knee). The burden rests upon the claimant to prove this allegation.

In order to meet this burden, the claimant must establish by the greater weight of the medical evidence the occurrence of a physical injury to her lumbar spine that meets all of the definitional requirements of Ark. Code Ann. §11-9-102(4)(A)(i). In this case, these definitional requirements would be:

- (1) The physical injury to her lumbar spine must arise out of and occur in the course of her employment with this respondent;
- (2) The physical injury to her lumbar spine must be caused by a specific incident;
- (3) The physical injury to her lumbar spine must be identifiable by time and place of occurrence;
- (4) The physical injury to her lumbar spine must cause internal or external physical harm to her body;
- (5) The physical injury to her lumbar spine must require medical services or result in disability.

In order to satisfy the first three of these requirements, the claimant must prove the existence of a causal relationship between the specific employment related incident on May 4, 2001, and a physical injury to her lumbar spine. After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove the existence of this necessary causal relationship.

The only direct evidence presented by the claimant to prove this required causal relationship between the specific employment related incident on May 4, 2001, and a physical injury giving rise to her subsequent low back and radicular complaint is her own testimony. Although the testimony of a party is never considered uncontradicted, this does not mean it can be arbitrarily disregarded. If this testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address. Obviously, the claimant's testimony would be legally competent to establish a close temporal relationship between the specific employment related incident on May 4, 2001, and the onset of her lumbar complaints. However, after consideration of all the evidence presented, it is my opinion that the claimant's testimony is not sufficiently credible to prove this temporal relationship.

The evidence presented reveals that the claimant commenced her employment with this respondent on May 3, 2001, the day before the employment related incident giving rise to this claim. The evidence is somewhat sketchy concerning the claimant's previous employments and work history.

The medical evidence presented shows that prior to May 4, 2001, the claimant had sought medical treatment on frequent occasions for complaints involving her lower back or lumbar spine, which were similar to, if not identical with, her current complaints. Although the claimant stated in her testimony that these prior low back or lumbar complaints were somehow related to a gallbladder condition and ended once her gallbladder was removed, this testimony is contrary to the medical evidence. The medical evidence shows that these episodes of complaints were limited to a series of traumatic incidents and events going back to at least August 12, 1997.

On August 12, 1997, the claimant sought medical treatment from the emergency room of St. Edwards Mercy Medical Center for complaints involving her neck, both shoulders, and "bilateral flank pain". She attributed these complaints to a "4-wheeler"

accident the prior Sunday.

On November 10, 1998, the claimant again sought medical treatment at St. Edwards Mercy Medical Center for complaints of low back pain and muscle spasms. The claimant gave a history that these complaints had been present since she was “beat up” in May of 1998.

On February 1, 1999, the claimant again appeared at the emergency room of St. Edwards Mercy Medical Center seeking treatment for complaints involving pain in her abdomen, chest, and mid to low back. She gave a history of the onset of these complaints some two to three days prior, but gave no specific precipitating event.

On August 27, 2000, the claimant appeared at St. Edwards Mercy Medical Center emergency room complaining of difficulties involving her neck, shoulder, and “lower back pain with leg cramps”. Complaints were also noted with the claimant’s left PSIS area. A history was taken that these complaints began two weeks prior with no specific precipitating trauma. It was noted that the claimant had been missing a lot, due to these complaints, and had seen a nurse practitioner in Charleston on two occasions (no records or reports of these visits has been tendered).

On December 10, 2000, the claimant sought medical treatment at St. Edwards Mercy Medical Center for complaints involving neck, shoulder, and back pain. She gave a history that these complaints had began with a motor vehicle accident, which occurred in the latter part of November of 2000. She indicated that she had also seen a Dr. Corley, following this accident. However, again no reports or records of Dr. Corley have been tendered (although the pages in Respondent’s Exhibit No. 1 have not been numbered, I would take this opportunity to note that the page following the emergency room report of December 10, 2000 is in no way related to that report, but is a part of the St. Edwards Mercy Medical Center emergency room records of May 6, 2001).

The medical records concerning the claimant’s initial evaluation and treatment

following the employment related incident of May 4, 2001, are not supportive of the claimant's testimony that she began experiencing symptoms involving her low back or lumbar spine at the time of the employment related accident on May 4, 2001. The emergency room records of Sparks Regional Medical Center note complaints involving only pain in the claimant's left knee and left hip. The pain chart completed by the claimant, on that date, indicates pain only in the area of the claimant's left kneecap and in an area located on the outside front of the claimant's left thigh. The claimant's initial diagnosis was that of a left knee contusion/muscle strain.

The first mention of the diagnosis of any conditions involving the claimant's low back or lumbar spine does not appear until the emergency room records of Sparks Regional Medical Center, dated May 16, 2001. Curiously, these records are somewhat unclear as to how the diagnosis of a "lumbar strain" was reached. It appears from these records that the claimant was complaining only of left knee and left hip pain. The pain chart completed by the claimant on that date, shows pain only in the left kneecap area. This report also records "chief complaints" as injury to left knee. The nursing intake shows only complaints of pain involving the claimant's left knee and the left side of her abdomen. The only indication of any symptoms involving the claimant's lower back or lumbar spine appears to be a note of "tenderness" to palpitation in this area at the time of the doctors physical examination. On this basis it appears that the diagnosis of a lumbar strain was also added. Lumbar x-rays performed on that date were interpreted as normal or showing no defect involving lumbar spine.

The claimant next sought medical treatment at the emergency room of Crawford Memorial Hospital on June 10, 2001. At that time, the claimant's complaints again only involved her left knee. On June 18, 2001, the claimant ultimately saw Dr. Robert Thompson, an orthopaedic surgeon. Again, the claimant's complaints only involved her left knee.

There is then a gap in the medical records from June 18, 2001 until November 3, 2001. Apparently, the claimant neither sought nor received medical treatment for any symptoms or complaints during this period.

On November 3, 2001, the claimant returned to the emergency room of St. Edwards Mercy Medical Center. At that time, her primary complaint consisted of neck pain, which she indicated to have began the day before. However, she also reported back pain, which she related as being present since her work related fall in May of 2001. She further stated that it was this pain that was now radiating “up into (her) neck”.

On November 11, 2001, she appeared at the emergency room of Sparks Regional Medical Center. Her complaints were of low back pain that now radiated into her legs, pain about her left knee, and her hands and arms going numb.

On November 15, 2001, an MRI study was performed on the claimant’s lumbar spine. This MRI study revealed only mild degenerative joint disease at L3-4 and mild degenerative changes of the facets of the vertebrae. This study was interpreted as showing no disc herniations and no stenosis of either the spinal cord or exiting nerve roots.

On November 25, 2001, the claimant reappeared at the emergency room of St. Edwards Mercy Medical Center. She was complaining of lower back pain and spasms and a “pinched nerve in neck”. However, on physical examination there was no note of muscle spasms involving the claimant’s lower back. The only finding recorded on this examination, was again a “tenderness to palpitation” of the lumbar muscles.

On January 10, 2002, the claimant appeared at the Charleston Medical Clinic, where she was seen by a Timbi West (APN). At that time, she gave a history of sustaining a torn ligament in her left knee together with degenerative disc disease and a herniated disc in her back. Curiously, none of the medical evidence indicates that the claimant was ever diagnosed as having a “herniated disc” in her back. Again, no objective findings were noted on the physical examination to substantiate any physical injury to the claimant’s

lower back or lumbar spine.

On January 16, 2002, the claimant returned to the Charleston Medical Center. At this time, she saw Dr. James Schmitz. The claimant complained of back and knee pain, and "pain all over". On physical examination, Dr. Schmitz noted that the claimant appeared in no acute distress and found no objective findings to support her extensive complaints, particularly those with her lower back or lumbar spine.

On February 3, 2002, the claimant appeared at the emergency room of St. Edwards Mercy Medical Center. At that time, she was complaining of pain in her neck, shoulders, and mid back. A physical examination once again revealed no objective findings to support these complaints, except for mild tenderness to palpitation at the base of her neck. X-rays were also interpreted as negative. However, appropriate treatment for these subjective complaints was provided.

On May 5, 2002, the claimant again appeared at the emergency room of St. Edwards Mercy Medical Center. This time she was complaining of low back and right arm pain, flank tenderness, and possible UTI (urinary tract infection) type symptoms. Testing and physical examination revealed no defects involving the claimant's lower back. The only objectively documented abnormalities involved blood in the claimant's urine, and thickening of the wall of her colon.

On May 17, 2002, the claimant returned to the emergency room of Sparks Regional Medical Center, complaining of low back pain radiating into both hips. This is also the first occasion any objective findings were noted to support the presence of any physical injury involving the claimant's lower back. This finding took the form of muscle spasms in the mid lower back. A diagnosis of "acute" or recent myofascial lumbar strain was made. However, no specific precipitating event is recorded in regard to these particular lumbar difficulties. These records further record the history that these difficulties commenced at approximately 6:00 a.m. on 5-17-2002.

On May 29, 2002, the claimant came under the care of Dr. Jerry O. Lenington, a pain management specialist. Dr. Lenington records:

“Ms. Horton presents to the pain clinic with a chief complaint of pain in her back. It goes down her left leg and seems to go somewhat into her knee. She states that she has had this since about May of 2001. She states she fell and landed on her knee. She described this pain as an aching, stabbing type pain and the pain down her leg as cramping type pain, and then she has pain in her neck. It goes up towards her shoulder tips. She described this more as a burning type pain. She states that she has had this only for maybe a little bit after May and knows of no instigating circumstance.”

Dr. Lenington’s physical examination appears to be totally within normal limits and shows no “objective findings” to support the claimant’s subjective complaints. In interpreting his review of the MRI of the claimant’s lumbosacral spine, he notes only mild degenerative disc changes, mainly at L3-4, and mild hypertrophic degenerative changes of the facet joints. However, he diagnoses the claimant’s difficulties as being attributable to lumbar radiculitis, or a L4 radiculopathy. He subsequently provided the claimant with a series of lumbar epidural steroid injections for the treatment of this diagnosed condition.

On January 8, 2003, the claimant began treatment by Dr. Terry Brackman. At that time she gave a history of a “L4-5 herniated disc” and degenerative disc disease with a left radiculopathy. However, the medical evidence shows that no diagnosis of a L4-5 herniated disc has ever been made by any of the claimant’s previous physicians. Although Dr. Brackman discusses changing the claimant’s medication to help her with muscle spasms, his physical examination fails to note the actual presence of any muscle spasms in the lumbar area or any other portion of the claimant’s spine. His physical examination further fails to note any objective findings to substantiate the claimant’s lumbar complaints.

Ultimately, it appears that the claimant came under the care of a Dr. Raymond F. Sorensea, purportedly a pain management specialist in Tulsa, Oklahoma. The majority of Dr Sorensea’s records are handwritten and are illegible.

The greater weight of the credible evidence does establish that the claimant is

suffering from mild degenerative disc changes, particularly at L3-4 and mild degenerative arthritic changes over the facet joints in her lumbar spine. All of these objectively demonstrated types of defects are not known to be caused by any specific traumatic event. Rather, these defects are the result of progressive degenerative changes primarily associated with the aging process. These abnormal findings likely predated the employment related incident on May 4, 2001. More importantly, the greater weight of the credible medical evidence presented fails to show that any of these objectively demonstrable defects are playing a causal role in producing the claimant's current lower back symptoms or complaints.

Contrary to the claimant's testimony, the greater weight of the evidence establishes that the claimant was experiencing periodic episodes of low back or lumbar symptoms and complaints (as well as other symptoms involving her neck, shoulders, and upper and lower extremities) long before the employment related incident of May 4, 2001, (the last episode of these difficulties occurred in December of 2000). It was these same symptoms and complaints which the claimant periodically voiced following the employment related incident of May 4, 2001.

Contrary to the claimant's testimony and the history she gave to several of her subsequent physicians, the greater weight of the evidence fails to show that she continuously experienced these difficulties from the date of the employment related incident on May 4, 2001 through the present time. Rather, these difficulties are shown to occur in periodic episodes, similar to the periodic episodes she was experiencing prior to the employment related incident.

It is also important to note that in the medical histories she gave after May 4, 2001, the claimant not only attributed all lower back or lumbar difficulties and radicular difficulties to the May 4, 2001 incident, but she further failed to relate a history of experiencing similar symptoms prior to this incident.

The claimant's testimony and her subsequent histories of the contemporaneous onset of symptoms, involving her low back and lumbar spine and radicular symptoms into her legs, with the employment related incident on May 4, 2001, is inconsistent with her failure to report these complaints when she initially sought medical treatment on May 6, 2001. Her testimony and subsequent histories that she experienced continuous difficulties with this portion of her anatomy following this employment related incident is not only inconsistent with her failure to report these difficulties when she initially sought medical treatment; it is and her failure to report any difficulties with this portion of her body to her various treating physicians between the emergency room visit of May 16, 2001, and the emergency room visit on November 3, 2001.

It is also important to note that the medical evidence fails to show any objective findings to support the occurrence of a recent or "acute" physical injury to the claimant's lower back or lumbar spine until May 17, 2002. Clearly, one would reasonably expect that any injury, sufficient to cause the severe and continuous symptoms described by the claimant would produce some type of objectively demonstrable finding to support its existence (such as a muscle spasms, reversal of the lordic curve, etc.), prior to May 17, 2002. It is also important to note that when an objectively demonstrable finding was noted to support the presence of a physical injury to the claimant's low back or lumbar spine, in the form of muscle spasms in the lumbar area, this finding resulted in a diagnosis of an "acute" or recent myofacial strain, rather than chronic difficulties from an injury occurring over a year prior.

In summary, the greater weight of the credible evidence shows that the claimant experienced periodic episodes of difficulties with her lower back or lumbar spine prior to the employment related incident on May 4, 2001, and has continued to experience similar (if not identical) episodes of difficulties following this incident. However, the greater weight of the evidence fails to show that the employment related incident played any causal role

in producing these subsequent periodic episodes of difficulties.

The claimant's failure to prove the existence of a causal relationship between the employment related incident of May 4, 2001 and any subsequent episodes of difficulties which she may have experienced with her lower back or lumbar spine, prevents a finding that these subsequent difficulties are the result of a physical injury to this part of her body that arose out of and occurred in the course of her employment on that date, that was caused by a specific incident and that is identifiable by time and place of occurrence. Thus, the claimant has failed to prove a "compensable injury" to her lower back or lumbar spine within the definition of Ark. Code Ann. §11-9-102(4)(A)(i). No benefits can be awarded under the Act for the claimant's subsequent lower back or lumbar difficulties.

II. LEFT KNEE DIFFICULTIES

The next issue concerns the claimant's entitlement to additional benefits under the Act, for her admittedly compensable left knee injury. The respondents admit that the claimant sustained a "compensable injury" to her left knee in the specific employment related incident on May 4, 2001. However, the respondents have paid no benefits for temporary disability, and it is unclear exactly how much of the medical expenses have been paid.

The first benefits to be addressed, will be the claimant's entitlement to the payment of medical expenses for her compensable left knee injury, as provided by Ark. Code Ann. §11-9-508. This subsection obligates the respondents to provide the claimant with all "reasonably necessary medical services" for this compensable injury. However, the burden rests upon the claimant to prove that the disputed medical services are, in fact, reasonably necessary medical services for her compensable injury. As it is unclear as to which medical services have been voluntarily accepted by the respondents, all of the medical services provided to the claimant for left knee difficulties on and after May 4, 2001, will be considered.

Medical services are “reasonably necessary” for the compensable injury when they are necessitated by or connected with the compensable injury and, at the time they are rendered, have a reasonable expectation of accomplishing their desired purpose or goal. Reasonably necessary medical services are not limited to those services intended only to correct or improve the actual physical damage caused by the compensable injury, but also extend to medical services necessary to diagnose the nature and extent of the injury and to provide only symptomatic relief.

For some reason, the respondents did not see fit to send the claimant to a physician of their choosing, when the compensable injury was initially reported. Instead, the claimant was apparently directed to go to the emergency room. The first medical services that were provided to the claimant for the compensable injury was by the personnel at the Sparks Regional Medical Center emergency room. A review of the records from this emergency room visit reveal that all of the services provided to the claimant at that time were directed toward the diagnosis and treatment of her compensable left knee injury and resulting symptoms. These records further show that the type of services provided were those commonly accepted by the general medical community as being appropriate in order to determine the nature and extent of the claimant’s injury and to provide her with, at least, symptomatic relief. I find these initial medical services to be “reasonably necessary” within the meaning of Ark. Code Ann. §11-9-508.

The next medical services provided to the claimant were again at the emergency room of Sparks Regional Medical Center on May 16, 2001. However, it appears from a review of the emergency room records that on that date, medical services were not only provided to the claimant for her left knee injury and resulting complaints, but were also provided her for lumbar difficulties which I have heretofore held to not be the result of a compensable injury. The medical services provided the claimant for her left knee difficulties again appear to be of a type and nature commonly recognized by the general

medical community as being appropriate for the evaluation and treatment of injuries to the knee, such as that experienced by the claimant. These services consisted of x-rays of the left knee, medication, crutches, and splinting. Thus, the medical services provided the claimant for her left knee complaints, by the personnel at the Sparks Regional Medical Center emergency room on May 16, 2001, also constitute “reasonably necessary medical services”. However, any services provided by the same personnel for the claimant’s lumbar complaints would not represent reasonably necessary medical services for a compensable injury and would not be responsibility of the respondents.

It appears that on June 4, 2001, the claimant was seen at the emergency room of Sequoyah Memorial Hospital in Sallisaw, Oklahoma. However, the only reports or records tendered from this facility consists of discharge instructions. It is impossible to determine from these records the purpose of the claimant’s visit to this facility and the type of services provided. Therefore, I have no alternative but to find that the claimant has failed to prove that any services provided her on that date by personnel at the emergency room of the Sequoyah Memorial Hospital represents “reasonably necessary medical services” for her compensable left knee injury. These services would also not be the responsibility of the respondents.

The claimant was then seen for her left knee complaints at the emergency room of Crawford Memorial Hospital. The records and reports of this facility reveal that all of the medical services provided the claimant on that date, were directed toward the evaluation of the nature and extent of her compensable left knee injury and the treatment of her symptomatic complaints. All of these services are again of the type and nature that is commonly recognized by the general medical community as being appropriate for these purposes. These include x-rays of the claimant’s left knee (taken until June 11, 2001), and medication in the form of Lorcet Plus and Anaprox. Thus, the medical services provided to the claimant by and at the direction of personnel at Crawford Memorial Hospital

emergency room and radiology department on June 10 and June 11, 2001, constitute “reasonably necessary medical services” for her compensable left knee injury and are the responsibility of the respondents herein.

The claimant was subsequently provided medical services by Dr. Robert C. Thompson, an orthopaedic surgeon at the Complete Orthopaedic and Sports Medicine Center in Van Buren, Arkansas. Dr. Thompson apparently saw the claimant upon referral from the physicians at the emergency room of Crawford Memorial Hospital. The medical evidence further shows that the claimant had previously been referred for an orthopaedic evaluation of her left knee difficulties by the physicians at the Sparks Regional Medical Center emergency room on May 16, 2001. However, this evaluation apparently did not occur, most likely due to the respondents’ failure to authorize or accept liability for the expense of the recommended evaluation (the Arkansas River Valley Orthopaedic Center is quite strict on obtaining prepayment or insurance authorization, prior to providing or even scheduling appointments). It is apparent that all of the services provided the claimant by Dr. Thompson were directed toward her compensable left knee injury and resulting complaints. The obvious purpose of these services was to accurately ascertain the nature and extent of this injury. In order to do so, Dr. Thompson “highly recommended” an MRI study of her left knee. This recommended MRI study was not performed, at that time. Again, it appears that this was the result of the respondents’ refusal to authorize or accept a financial responsibility for this study. All of the services provided and recommended to the claimant for her left knee difficulties by Dr. Thompson, particularly the MRI study, are also of a type and nature commonly recognized and employed by the general medical community, to accurately diagnose the nature and extent of knee injuries such as that experienced by the claimant. Thus, the medical services provided the claimant and recommended to the claimant by Dr. Thompson constitute “reasonably necessary medical services” for the claimant’s left knee injury and are the responsibility of the respondents.

The claimant next sought medical services from the emergency room of St. Edwards Mercy Medical Center on November 3, 2001. A review of the records generated by this visit show that the services provided to the claimant were only directed toward her complaints involving her neck and back. As neither of these types of complaints have been proven to be the result of a “compensable injury”, the medical services received by the claimant on that date would not constitute “reasonably necessary medical services” for a compensable injury and would not be the responsibility of the respondents.

The claimant was then seen at the emergency room of Sparks Regional Medical Center on November 11, 2001. A review of these reports and records show that the claimant was seen, evaluated, and treated for multitude of complaints. However, one of these complaints was the claimant’s chronic left knee pain. However, it does not appear from these reports and records that except for possibly a brief examination, no medical services were actually provided the claimant for her chronic left knee pain. Therefore, the majority of the medical services provided to the claimant on that date would not constitute reasonably necessary medical services for her compensable left knee injury and would not be the responsibility of the respondents. If an actual examination was made of the claimant’s left knee, the expense of this examination only would be the liability of the respondents.

On November 15, 2001, the claimant was seen at the Sparks Regional Medical Center and an MRI of her lumbar spine was performed. Clearly, this test would not represent medical services for her compensable left knee injury and would not be the responsibility of the respondent.

On November 25, 2001, the claimant was provided medical services at the emergency room of St. Edward Mercy Medical Center. However, these records show that all of the services provided to the claimant on that date, were directed toward her neck and lower back complaints. There is no evidence that any services were sought or provided for

difficulties involving the claimant's left knee. Therefore, any services provided on that date would not represent reasonably necessary medical services for a compensable injury and would not be the responsibility of the respondents.

On January 10, 2002, the claimant was seen at the Charleston Medical Clinic in Charleston, Arkansas. (This clinic is a division of Sparks Regional Medical Center). At that time, the claimant was complaining of a multitude of symptoms, which include her left knee, but was apparently only seeking a refill of her pain medication. During this visit a physical examination of her knee was conducted and apparently steps were again taken to perform an MRI on the left knee. This had previously been recommended by Dr. Thompson (see Claimant's Exhibit No. 1, page 40). An MRI study of the claimant's left knee was finally performed on May 17, 2002, at the direction of the Charleston Medical Clinic. It is my opinion that the physical examination of the claimant's left knee performed at the Charleston Medical Clinic on January 10, 2002, and the MRI study of her left knee performed on January 17, 2002, represent "reasonably necessary medical services" for the claimant's compensable left knee injury. The expense of these services are the liability of the respondents. However, the other services provided the claimant at the Charleston Medical Clinic, on January 10, 2002, that were directed towards her various other complaints with her neck and lower back do not represent "reasonably necessary medical services" for a compensable injury and are not the responsibility of the respondents.

An orthopaedic consultation, for evaluation of the claimant's left knee complaints was recommended following the MRI study on January 17, 2002 (Claimant's Exhibit No. 1, page 55). However, this evaluation has not taken place, again apparently due to the respondents' refusal to authorize such services and the claimant's inability to obtain such services without this authorization. After consideration of all the evidence presented, it is my finding that a further evaluation of the claimant's compensable left knee injury by an

orthopaedic surgeon (now having access to an MRI study to the claimant's left knee) is reasonable and medically appropriate in order to accurately diagnose the nature and extent of her compensable injury and to determine if further treatment is required. Thus, I find that at least this initial evaluation would constitute "reasonably necessary medical services" under Ark. Code Ann. §11-9-508. As the claimant has already been seen by Dr. Thompson for these difficulties, he would appear to be the appropriate provider for this additional evaluation.

The final matter concerns the claimant's entitlement to temporary total disability benefits for her admittedly compensable left knee injury. The burden again rests upon the claimant to prove her entitlement to these benefits.

As this compensable injury is to a portion of the claimant's body that is scheduled under Ark. Code Ann. §11-9-521, her entitlement to temporary total disability benefits is controlled by subdivision (a) of this section. Under this subdivision, the claimant is entitled to temporary total disability benefits during the healing period from the effects of her compensable left knee injury or until she returns to work, whichever occurs first.

Contrary to the respondents' argument, the claimant need not prove that she has been medically restricted from engaging in any or all types of regular gainful employment. Nor must she prove that she has been actually incapacitated from earning wages, Wheeler Construction Company v. Armstrong, Ark. 73 Ark. App 146 , 41 S.W.3rd 822 (2001).

However, under the provisions of Ark. Code Ann. §11-9-526, the respondents can escape liability for temporary total disability benefits by offering, or otherwise obtaining for the claimant, employment suitable to her capacity. Should the claimant unjustifiably refuse such an offer of employment, compensation (including temporary total disability benefits) would be suspended during the continuance of the refusal. In the present case, the respondents argue that the claimant is not entitled to temporary total disability benefits because suitable employment would have been provided her by the respondent had the

claimant sought or requested such a position. Applicable case law clearly provides that it is the duty of the respondent to offer such employment, not the duty of the claimant to seek such employment, Barnette v. Allen Canning Company, 49 Ark. App. 61, 896 S.W. 2nd 444 (1995). In the present case, the evidence presented clearly shows that the respondents have never actually offered the claimant suitable employment. Thus, there can be no unjustifiable refusal of such an offer, and Ark. Code Ann. §11-9-526 does not act to bar the claimant's entitlement to the temporary total disability benefits she now seeks.

The issue of the duration of the healing period is a medical question and must be resolved upon the basis of the greater weight of the credible medical evidence presented. It is well settled that the healing period from the effects of a compensable injury continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the resolution or improvement of the actual physical damage caused by the compensable injury. Once this underlying physical damage has resolved, or at least stabilized at a level where nothing further in the way of time or medical treatment offers a reasonable expectation of improvement, then the healing period has ended.

In the present case, an accurate determination of the duration of the claimant's healing period is hindered by the fact that the claimant has been unable to obtain appropriate medical services to evaluate and treat her compensable left knee injury. The claimant's inability to obtain such services has been occasioned by factors beyond her control, such as her lack of finances, and the respondents' refusal to meet their obligation to provide her with all appropriate medical services.

The record clearly shows that the respondents failed to designate an initial treating physician for the claimant's compensable left knee injury. When an evaluation by an orthopaedic specialist was initially recommended (a recommendation which would be reasonably and medically appropriate in light of the evidence presented), the respondents

appear to have refused to provide such an evaluation. Once the claimant obtained, on her own, an initial evaluation by an orthopaedic specialist, specific tests were recommended (particularly an MRI study of the claimant's left knee). This recommendation also appears to be reasonable and medically appropriate in light of the evidence presented. Again, the respondents refused to provide such services. When the recommended testing was ultimately performed, another orthopaedic consultation or follow up evaluation was prescribed. Again, the respondents have refused to provide this service. The claimant should not be penalized for the respondents' refusal to meet the obligation imposed upon them by Ark. Code Ann. §11-9-508.

After consideration of the evidence presented, it is my opinion that the claimant has clearly proven by the greater weight of the credible evidence that she continued within her healing period from the effects of her compensable left knee injury through, at least, the date of the initial evaluation by Dr. Thompson on June 18, 2001. From the date of her injury through June 18, 2001, the claimant continued under active medical treatment for her compensable left knee injury by emergency room physicians of various local hospitals and by Dr. Thompson. As of the date of Dr. Thompson's evaluation, the true nature and extent of the claimant's compensable left knee injury had not been properly evaluated. As of the date of the hearing in this case, no accurate evaluation by a proper medical specialist of the nature and extent of the claimant's compensable left knee injury had yet been completed.

If the claimant's compensable left knee injury took the form of a simple contusion (as initially diagnosed), then her healing period from the effects of this compensable injury has likely long since ended. However, if the claimant's compensable left knee injury took the form of an internal derangement of the left knee (as indicated to be a "probability" by Dr. Thompson), then the claimant's healing period may yet be continuing and may not end until further medical treatment, such as surgical intervention, is provided.

Clearly, the claimant bears the burden of proof in regard to all factors necessary to establish her entitlement to the temporary total disability benefits she now seeks. This includes the duration of her healing period. However, Ark. Code Ann. §11-9-508 obligates the respondents to provide the claimant with all reasonably necessary medical services for her compensable injury. One of which would be all reasonably necessary evaluations and testing to determine the nature and extent of her compensable left knee injury. Had the respondents met this obligation, the medical record would have been sufficient to accurately determine when and if the claimant's healing period from the effects of her compensable left knee injury had ended. The respondents should not be allowed by their refusal to meet their statutory obligation, to prevent the claimant from obtaining the appropriate medical evidence to prove the duration of her healing period from the effects of her compensable injury.

Therefore, it is my opinion that the claimant has proven by the greater weight of the credible medical evidence that her healing period from the effects of her compensable left knee injury continued through at least June 18, 2001. It is my further opinion that any determination in regard to the continuation of the claimant's healing period after June 18, 2001, should be reserved for future determination, once the appropriate reasonably necessary medical services have been provided by the respondents to accurately make such a decision.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 4, 2001, the relationship of employee-employer carrier-third party administrator existed between the parties.
3. On May 4, 2001, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$103.00 for both total disability and permanent

partial disability.

4. On May 4, 2001, the claimant sustained a compensable injury to her left knee.
5. The claimant has failed to prove by the greater weight of the credible evidence that on May 4, 2001, she sustained a physical injury to her low back or lumbar spine that arose out of and occurred in the course of her employment with this respondent, that was caused by a specific incident, and that is identifiable by time and place of occurrence. Thus, she has failed to prove the occurrence of a “compensable injury” as that term is defined by Ark. Code Ann. §11-9-102(4)(A)(i).
6. The claimant would not be entitled to any benefits under the Act for any difficulties involving her lower back or lumbar spine.
7. The medical services provided and recommended to the claimant for her left knee difficulties, on and after May 4, 2001, by and at the direction of the personnel at the Sparks Regional Medical Center, the St. Edwards Mercy Medical Center, Crawford County Hospital, Dr. Robert C. Thompson, and the Charleston Medical Clinic represent reasonably necessary medical services for the claimant’s compensable left knee injury within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provision of this section, the respondents are liable for the expenses of these services, subject to the medical fee schedule established by this Commission. However, the respondents are not liable for any medical services that have been concurrently provided to the claimant by some of these same medical providers for any other complaints or difficulties, particularly complaints and difficulties involving her neck and lumbar spine.
8. The claimant has proven by the greater weight of the credible evidence that

she was rendered temporarily totally disabled as a result of her compensable left knee injury, for at least the period of May 5, 2001 through June 18, 2001. The claimant's entitlement to continued temporary total disability benefits, accruing after June 18, 2001, should be reserved for future determination for the reasons heretofore set forth in this Opinion.

9. The respondents have denied the occurrence of any compensable injury to the claimant's low back or lumbar spine and have controverted her entitlement to any benefits attributable to such difficulties. The respondents have also controverted the claimant's entitlement to any temporary total disability benefits for her admittedly compensable left knee injury and her entitlement to the payment of any medical expenses for treatment of her left knee complaints that were unpaid as of the date of the prehearing conference.
10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on all temporary total disability benefits herein awarded and which may hereinafter be awarded and on all medical expenses herein awarded and which may hereinafter be awarded, which were unpaid as of the date of the prehearing conference.

ORDER

The respondents shall pay to the claimant temporary total disability benefits for the period beginning May 5, 2001, and continuing through at least June 18, 2001.

The issue of the claimant's entitlement to temporary total disability benefits, accruing after June 18, 2001, is reserved for future determination for the reasons heretofore set forth in this Opinion.

The respondents shall be liable for the expense of medical services provided to the claimant for her compensable left knee injury by and at the direction of personnel at the

Sparks Regional Medical Center emergency room, personnel at the St. Edwards Mercy Medical Center emergency room, personnel at the Crawford Memorial Hospital, Dr. Robert C. Thompson, and personnel at the Charleston Medical Clinic. The respondents shall also be liable for, at least, one more evaluation of the claimant's left knee difficulties by or at the direction of Dr. Robert C. Thompson. This liability is subject to the medical fee schedule established by this Commission.

The claimant's entitlement to additional medical services for her compensable left knee injury, following the ordered evaluation by Dr. Robert Thompson, is reserved for future determination, if necessary.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on all temporary total disability benefits herein awarded and which may hereinafter be awarded and all medical expenses herein awarded and which may hereinafter be awarded that were unpaid as of the date of the prehearing conference. One-half of this attorney's fee is the obligation of the respondents in addition to such benefits. The remaining one-half of this attorney's fee is to be withheld by the respondents from benefits herein awarded to the claimant.

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.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

