

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F413075

DIANE GOOCH, Employee	CLAIMANT
ROGERS SCHOOL DISTRICT, Employer	RESPONDENT
RISK MANAGEMENT RESOURCES, Carrier	RESPONDENT

OPINION FILED AUGUST 11, 2005

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS L. NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

On July 27, 2005, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on March 31, 2005, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #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 the within claim.
2. The relationship of employee-employer existed between the parties at all relevant times.
3. The claimant sustained a compensable injury to her left knee on December 12, 2002.
4. Respondent has paid medical with the exception of knee replacement surgery.

At the time of the hearing the parties also agreed to stipulate that claimant would be entitled to the maximum compensation rate in effect for 2002.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether left knee replacement surgery is reasonable and necessary medical

treatment for her compensable knee injury.

2. Temporary total disability related to knee replacement surgery.
3. Attorney fee.

At the time of the hearing the claimant clarified the request for medical treatment to include continuing medical treatment relating to claimant's left knee replacement. In addition, claimant clarified that her request for temporary total disability benefits is for 32 days beginning September 8, 2004. Claimant also reserved as an issue her entitlement to permanent partial disability benefits associated with the left knee replacement.

The claimant contends she suffered a compensable injury to her left knee on or about December 12, 2002, which was originally accepted as compensable but became controverted at the time of the claimant's knee replacement.

The respondents contend the claimant sustained a minor temporary aggravation of a pre-existing condition to her left knee on or about December 12, 2002 and that based on the report of Dr. Sites the recommended left knee surgery did not arise out of the compensable injury.

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 witness and to observe her 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 March 31, 2005, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. The parties' stipulation that claimant is entitled to the maximum compensation rate in effect for 2002 is also hereby accepted as fact.

3. Claimant has failed to prove by a preponderance of the evidence that her left knee replacement surgery is reasonable and necessary and causally related for her compensable left knee injury of December 12, 2002.

FACTUAL BACKGROUND

The claimant is a 47-year-old woman who has been employed by the respondent since 1984. Claimant teaches health and physical education at Kirksey Middle School.

The claimant has had an extensive history of knee problems. In addition to suffering from rheumatoid arthritis which occasionally affects her knees, claimant has also been diagnosed as suffering from osteoarthritis in her left knee. Prior to December 12, 2002, the claimant had undergone three separate surgeries on her left knee. The first surgery was performed by Dr. Tom Coker, Sr., and the second and third surgeries were performed by Dr. Terry Sites. In addition to those surgical procedures, the claimant has also undergone numerous injections in her left knee.

On December 12, 2002, the claimant was demonstrating to a class a basketball drill and felt a pop in her left knee. Claimant reported the incident to her principal and was sent to Dr. Gary Moffitt for medical treatment. Dr. Moffitt diagnosed claimant's condition as a strain superimposed upon a pre-existing arthritic condition. Dr. Moffitt treated claimant conservatively, but subsequently referred claimant to Dr. Terry Sites, an orthopaedic surgeon, for further evaluation. As previously noted, claimant had two prior left knee surgeries which had been performed by Dr. Sites.

On January 23, 2003, the claimant underwent surgery on her left knee by Dr. Sites. Dr. Sites' operative report indicates that claimant suffered from a torn medial meniscus. Dr. Sites' medical reports immediately following the surgery indicate that claimant had a good result, but by April 2003 she was noting an increase in her left knee pain. As a result, Dr. Sites prescribed cortisone injections for the left knee. Claimant's last injection

occurred in August 2003 and in a report dated August 25, 2003, Dr. Sites noted that claimant's left knee was much better after that injection but noted that she might need occasional cortisone injections in the future. Dr. Sites indicated that claimant was to call him as her symptoms dictated.

During the period of time in 2003 when claimant was being evaluated by Dr. Sites for her left knee injury, claimant was also receiving treatment for a non-work related right knee condition. Claimant's treatment with Dr. Sites for her right knee continued after August 2003. In addition, in January 2004 the claimant received medical treatment from Dr. Sites for a right hip injury following a fall.

In March 2004 the claimant returned to Dr. Sites complaining of additional left knee pain. After some cortisone injections and conservative treatment, Dr. Sites eventually performed a total left knee replacement on September 8, 2004.

The respondent accepted claimant's left knee injury of December 12, 2002 as a compensable injury and paid compensation benefits, including medical treatment from Drs. Moffitt and Sites. Respondent has not accepted as compensable the left knee replacement surgery which was performed in September 2004. As a result, claimant has filed this claim contending that the left knee replacement surgery is reasonable and necessary medical treatment for her December 12, 2002 left knee injury. In addition, claimant seeks 32 days of temporary total disability benefits and a controverted attorney fee.

ADJUDICATION

A claimant has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Commission Opinion filed February 17, 1989 (D612291).

After reviewing the evidence in this case impartially, without giving the benefit of the

doubt to either party, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that the left knee replacement surgery and subsequent medical treatment is reasonable and necessary and causally related to her original compensable left knee injury.

As previously noted, claimant has an extensive history of left knee problems including three surgical procedures on the left knee. Claimant has been diagnosed as suffering from rheumatoid arthritis, and more specifically osteoarthritis, of her left knee. Two of those prior surgeries were performed by Dr. Sites and he is obviously well acquainted with claimant's left knee history. Following claimant's injury in December 2002 claimant underwent another surgical procedure on her left knee which was performed by Dr. Sites in January 2003. It was Dr. Sites' opinion that that surgery was a direct result of the injury which claimant suffered on December 12, 2002 and respondent has paid for that procedure.

However, it is also Dr. Sites' opinion that the left knee replacement surgery is not causally related to claimant's December 2002 injury, but rather is the result of her pre-existing condition. In a letter dated August 16, 2004, Shannon Moore, a claims specialist for the respondent, sent a letter to Dr. Sites inquiring as to whether the need for claimant's surgery was a direct result of her injury of December 12, 2002 or her pre-existing condition. In response to that inquiry Dr. Sites authored a letter dated August 25, 2004 indicating that the surgery was related to claimant's pre-existing condition, not her injury of December 12, 2002.

Based upon the objective findings and within a reasonable degree of medical certainty, it is my opinion that it is more-likely-than-not Ms. Gooch's left knee degenerative changes are a result of a condition pre-existing her injury of 12-12-02.

The fact that claimant's left knee replacement surgery was related to her pre-

existing condition, not the December 2002 left knee injury, is also supported by Dr. Sites' medical report of August 3, 2004 wherein he notes his impression that claimant suffers from end-stage osteoarthritis. In short, it was a continuing degeneration of claimant's knee caused by osteoarthritis which led to her left knee replacement, not the injury of December 12, 2004.

Furthermore, I note that clinic notes from Dr. Sites' office indicate that this was explained to the claimant prior to the surgery. An office note of August 30, 2004 indicates that claimant was informed about her pre-existing condition with regard to workers' compensation paying for the surgery. The note states that claimant "was fine about it - will put on personal insurance." Subsequent notations indicate that Dr. Sites' office obtained permission to perform the left knee replacement from claimant's group health insurance, Blue Cross Blue Shield.

In summary, claimant has the burden of proving by a preponderance of the evidence that her left knee replacement is reasonable and necessary medical treatment for her compensable left knee injury of December 12, 2002. Here, the evidence indicates that claimant had a significant history of left knee problems which had resulted in three prior surgeries. Claimant suffered from severe osteoarthritis in her left knee which resulted in a continuing degenerative condition. In response to an inquiry regarding whether the claimant's need for the replacement was a direct result of the December 2002 work-related injury or claimant's pre-existing condition, Dr. Sites opined that the claimant's surgery was the result of the pre-existing condition, not the injury of December 12, 2002. Based upon this evidence which I find to be credible and entitled to great weight. I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that the left knee replacement surgery and subsequent medical treatment is reasonably necessary for treatment of her compensable left knee injury.

ORDER

Claimant has failed to prove by a preponderance of the evidence that the left knee replacement surgery in September 2004 is reasonable and necessary medical treatment for her compensable left knee injury of December of 2002. Therefore, her claim for compensation benefits is hereby denied and dismissed.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE