

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407751

TRIENICE M. JACOBS, EMPLOYEE	CLAIMANT
SOUTH ARKANSAS DEV. CTR., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED DECEMBER 2, 2005

Hearing before Administrative Law Judge J. Mark White on October 27, 2005, in El Dorado, Union County, Arkansas.

Claimant represented by Mr. Greg Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 27, 2005, the above-captioned claim came on for a hearing in El Dorado, Arkansas. A pre-hearing conference was conducted on July 25, 2005, and a Prehearing Order was entered that same day. A copy of the July 25, 2005, Prehearing 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 Order.

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

relationship existed at all relevant times, including June 28, 2004; that on June 28, 2004, the claimant sustained a compensable injury to her left knee; that respondents accepted the June 28, 2004, left knee injury as compensable and paid benefits, including a permanent impairment rating of 10% to the lower extremity; that the claimant was released to return to work on November 22, 2004; and that the Commission granted the claimant a change of physician to Dr. Kenneth Gati on February 11, 2005. At the hearing, the parties further stipulated that the claimant earned an average weekly wage of \$168.05, entitling her to a compensation rate of \$112; and that the respondents paid temporary disability benefits to the claimant through November 22, 2004.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury to her low back; whether additional medical treatment is reasonably necessary in connection with a compensable injury; whether the claimant is entitled to additional temporary total disability benefits; and controversion and attorney's fees.

The claimant contends that she is in need of additional medical treatment with regard to the injuries she has sustained, specifically her left knee and back; that she is entitled to additional temporary total disability benefits and that she has not reached maximum medical improvement; in the alternative, that she has entered a

new healing period and is entitled to additional temporary total disability benefits; and that she is entitled to attorney's fees as permitted by law.

The respondents contend that the claimant's need for medical treatment associated with her lower back is not causally related to the incident that occurred on June 28, 2004; that the claimant cannot establish a compensable injury to her lower back on that date; that there are no objective findings to support a work-related back injury; that respondents should not be liable for benefits associated with the same; and that any treatment with Dr. Gati prior to the issuance of a change of physician was unauthorized treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are 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 claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged low-back injury is established by medical evidence supported by objective findings.
4. The claimant has therefore failed to prove by a preponderance of the evidence that she sustained a compensable injury to her low back.
5. The claimant has proven by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable left-knee injury.
6. The claimant has proven by a preponderance of the evidence that she re-entered her healing period as of March 9, 2005, that she remains in her healing period, and that she has not returned to work.
7. The claimant has therefore proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from March 9, 2005, through a date yet to be determined.
8. The respondents have controverted all benefits sought herein.

DISCUSSION

I. History

The claimant sustained a compensable injury to her left knee on June 28, 2004, when she fell, landing on the knee. She saw Dr. Matthew Calloway the day of the injury complaining of knee pain, and Dr. Calloway diagnosed contusions of the hip and knee. X-rays revealed mild to moderate osteoarthritis of the left knee. He prescribed medication and released her.

When her knee failed to improve, the claimant on her own saw Dr. Kenneth Gati, an orthopedic specialist, on July 7. Dr. Gati recorded the history as follows:

She is complaining of pain in her knee since 06/28/04 when she fell causing pain within her knee. She reports that the pain goes from her hip down to her knee and down into her foot. She occasionally has a little bit of numbness within her foot. There is no tingling. The patient denies any problems with her knee prior to the fall.

After reviewing the knee x-rays, Dr. Gati diagnosed "back pain, possible disk herniation" (apparently referring to the pain running from her hip to her knee) and "right knee pain, possible medial meniscal tear." He ordered an MRI of the knee, which revealed a possible tear and a small effusion. Dr. Gati recommended conservative treatment and physical therapy.

Before she could begin the recommended therapy, the claimant was

redirected by the respondents to an authorized physician, Dr. D'Orsay Bryant. Dr. Bryant first saw her on August 23, at which point he noted "severe patellofemoral crepitus" and recommended surgery. He saw her again August 31, at which point he opined, "Conservative management has failed." This statement is admittedly somewhat odd, in that the claimant had received little conservative management at that point, and no physical therapy at all.

Dr. Bryant performed arthroscopic surgery on September 3. He noted a meniscal tear during the surgery and debrided it. The claimant was released from the hospital that same day. Two days later, she was admitted to the hospital with complaints of neck spasms and knee pains. Dr. Gregg Massanelli noted "possible resolving early cellulitis" in the surgical wound. He administered antibiotics and released the claimant. The claimant does not contend the neck spasms were related to her employment or her compensable injury.

The claimant returned to Dr. Bryant on September 7. He noted the hospitalization but said nothing of the possible cellulitis. Over the next two months, the claimant returned to Dr. Bryant several times, and he consistently recorded that the claimant was doing better after surgery. But physical therapy notes from the same time period reflect consistent complaints of pain by the claimant, rated by her as high as eight on a ten-point scale. The physical therapist noted dramatic pain

behavior by the claimant in multiple sessions. The last physical therapy note in the record is dated October 22, in which the claimant reports her knee pain as five on a ten-point scale. The claimant testified that she did not report improvement in her condition to Dr. Bryant, and that she in fact remained in pain after the surgery.

On November 16, Dr. Bryant recorded that the claimant's "preoperative pain has been relieved." In her testimony, the claimant denied this. Dr. Bryant released her to return to work, and on November 24 he assigned her a permanent impairment rating of 10% to the lower extremity.

The claimant requested a change of physician to Dr. Kenneth Gati, which change the Commission granted on February 11, 2005. The claimant then returned to Dr. Gati on March 9. Dr. Gati quoted the claimant as saying Dr. Bryant's surgery made her knee pain worse. New x-rays again revealed osteoarthritis in the left knee, as well as "loss of lumbar lordosis and significant straightening of the spine." Dr. Gati diagnosed "low back pain with sciatica and possible disk herniation" and "knee pain with osteoarthritis and history of knee strain." He recommended MRI exams of the knee and back, but these have not been performed. In a May 2 letter to the claimant's attorney, Dr. Gati opined that the claimant's arthritis was aggravated by the work injury, and that "she would benefit from injection therapy for her knee."

II. Adjudication

A. Compensability

The claimant contends that in the incident of June 28, 2004, she also sustained a compensable low back injury. She has not complained of pain in her low back, but rather pain running from her hip to her leg, which Dr. Gati has attributed to a possible lumbar disc herniation. For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

After reviewing the medical record, I can identify only one objective finding

of injury to the low back – x-rays revealing straightening of the spine and loss of lumbar lordosis. While straightening of the spine could corroborate the existence of muscle spasms, I can find no evidence of any doctor noting, or the claimant complaining of, muscle spasms. Moreover, these x-rays were not taken until March 2005, nearly nine months after the compensable injury. Given this significant lapse of time, I cannot reasonably find a causal relationship between the work-related accident and the x-ray findings. I note that Dr. Gati also mentioned straight-leg raise test results as “objective,” but it is plain that such tests do not constitute an objective finding as that term is defined in the Workers’ Compensation Act.

I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of her alleged low-back injury is established by medical evidence supported by objective findings. I therefore find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury to her low back.

B. Additional Benefits

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. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

Dr. Gati has diagnosed the claimant with osteoarthritis of the knee and opined that the arthritis was aggravated by her compensable injury. He has recommended additional treatment, and there is no medical opinion in the record contradicting him. His diagnosis and recommendation are obviously based in part on the claimant's subjective reports of pain, but he also noted two objective findings of continued injury supporting his diagnosis – crepitus in the knee, and x-rays showing the osteoarthritis. I recognize the substantial discrepancies between the records of Dr. Bryant and records of the physical therapist, as well as between the records of Dr. Bryant and the claimant's testimony, as to the claimant's improvement or lack thereof from surgery. Nonetheless, Dr. Bryant treated the claimant for a meniscal tear; there is no indication in the record he treated the osteoarthritis which is unquestionably present in her knee.

It appears that whatever outcome the claimant may have experienced from her surgery, she experienced a recurrence of knee problems in the months after Dr. Bryant released her. Given the uncontradicted opinion of Dr. Gati, I find that the claimant has proven by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with the compensable left-knee

injury.

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during her healing period or until she returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of her injury will permit, and there is nothing further in the way of treatment that will improve her condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

Dr. Gati has recommended additional treatment, and as discussed above I find such treatment to be reasonably necessary. I find that the claimant has proven by a preponderance of the evidence that she re-entered her healing period as of March 9, 2005, the date of Dr. Gati's diagnosis; that she remains in her healing period; and that she has not returned to work. I therefore conclude that the claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from March 9, 2005, through a date yet to be determined.

AWARD

The claimant has proven by a preponderance of the evidence that additional medical treatment is reasonably necessary in connection with her compensable left-knee injury, and that she is entitled to temporary total disability benefits from March 9, 2005, through a date yet to be determined. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715. 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