

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408287

SUSAN KELLEY,
EMPLOYEE

CLAIMANT

ST. ANTHONY'S HOSPITAL ASSOC.,
EMPLOYER

RESPONDENT

PREFERRED PROFESSIONAL INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 16, 2005

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Conway, Faulkner County, Arkansas.

The claimant was represented by HONORABLE DONALD C. PULLEN, Attorney at Law, Hot Springs, Arkansas.

The respondents were represented by HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on February 16, 2005 in Conway, Arkansas. A prehearing order was entered in this case on December 17, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. That the employee-employer relationship existed on April 18, 2004, and at all times pertinent hereto.
2. Respondents controverted this claim in its entirety.
3. The parties stipulate that the claimant's temporary total disability compensation rate is \$242 per week.

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

1. Compensability (including objective findings).
2. Attorney's fees.
3. Temporary total disability.
4. Medical expenses.

The record consists of the February 16, 2005 hearing transcript and the exhibits contained therein. In addition, I have supplemented the record by "blue-backing" Mr. Pullen's April 25, 2005 letter clarifying a mistake in the hearing record by noting that the parties stipulated to the claimant's TTD rate and not a TPD rate.

DISCUSSION

The claimant contends that she sustained a compensable knee injury on April 18, 2004 as a result of a specific

incident where she purportedly twisted her knee with a loud pop while working with an unruly patient trying to get out of a shower chair at St. Anthony's Hospital. To prove the occurrence of a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16); and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

In the present case, the shower chair incident qualifies as a specific incident within the meaning of Act 796 of 1993, and the alleged injury sustained on April 18, 2004 is identifiable by time and place of occurrence. There is likewise no dispute that any knee injury sustained while restraining a patient to a shower chair at St. Anthony's on

April 18, 2004 arose out of and in the course of Ms. Kelley's employment with St. Anthony's.

I also find that the claimant has proven by a preponderance of the evidence that she in fact sustained a knee injury on April 18, 2004 which caused internal harm to the body and required medical services which has resulted in at least temporary disability. Furthermore, I find that the April 18, 2004 knee injury is established by medical evidence supported by objective findings as defined in Ark. Code Ann. § 11-9-102(16).

In reaching these conclusions, I initially note that Ms. Kelley previously had a right knee surgery sometime in the 1990s. However, the record does not contain any reports from that surgery, and the record contains no indication that Ms. Kelley experienced any ongoing symptoms following her prior right knee surgery until the shower chair incident with an unruly patient on April 18, 2004. Following the April 18, 2004 incident, Ms. Kelley followed up on several occasions at the St. Anthony's Emergency Room, including an initial visit on April 18, 2004. Ms. Kelley has also been treated at different times by Dr. Johnson, Dr. James Mulhollan, and Dr. John Wilson. Each doctor's reports trace Ms. Kelley's current symptoms back to the incident at work

on April 18, 2004. On July 26, 2004, Dr. Johnson diagnosed Ms. Kelley with post-traumatic internal derangement of the right knee. On August 2, 2004, Dr. Johnson confirmed that Ms. Kelley had persistent pain and popping, but in light of the lack of any abnormality identified on an MRI of the knee, Dr. Johnson proposed a referral to Dr. Mulhollan for his opinion. The lack of abnormality on the MRI notwithstanding, Dr. Mulhollan indicated that it is impossible to predict whether the patient has a meniscal tear, and Dr. Mulhollan purposed to inject Ms. Kelley's knee to establish quadriceps function, "probably" followed by elective arthroscopy of the knee "to find out what was going on." In a letter dated November 1, 2004, Dr. Wilson opined that Ms. Kelley should continue with Dr. Mulhollan and his recommendations. However, Ms. Kelley testified that the respondents are not providing the recommended treatment, and she has been unable to herself pay for Dr. Mulhollan's prescription for crutches, injections, and further treatment.

In light of the lack of evidence indicating that Ms. Kelley was experiencing any type of persistent knee problems prior to April 18, 2004, and her testimony as corroborated by the medical records indicating that she began

experiencing knee problems as a result of the April 18, 2004 incident at work, which became progressively worse over time, I find that the claimant has established by a preponderance of the evidence that as a result of the injury sustained on April 18, 2004 she has experienced internal harm to the knee which required medical services beginning on April 18, 2004 and which ultimately resulted in temporary disability beginning in August 2004.

The MRI of Ms. Kelley's knee performed on July 30, 2004 indicated, among other conclusions, "small to moderate joint effusion" in the right knee. According to my legal research, the Arkansas Court of Appeals has never in a published opinion determined whether or not effusion of a joint is an objective medical finding of injury. However, my research indicates that the Full Commission has addressed this issue on several occasions, and has specifically determined that effusion is an objective finding within the meaning of Act 796 of 1993. See generally Sheila Long v. L & J Mechanical, Full Workers' Compensation Commission, Opinion filed September 30, 2003 (F008439). In light of Ms. Kelley's persistent symptoms after April 18, 2004, and the lack of documentation or testimony indicating any knee problems before the incident on April 18, 2004, I find that

Ms. Kelley has established by a preponderance of the evidence a causal connection between the joint effusion identified by MRI in July of 2004 and the knee injury which she sustained by specific incident at work on April 18, 2004. I therefore find Ms. Kelley has proven by a preponderance of the evidence that her work-related knee injury is established by medical evidence supported by objective findings.

For the reasons discussed herein, I therefore find that Ms. Kelley has established by a preponderance of the evidence each of the elements necessary to establish a compensable knee injury caused by specific incident on April 18, 2004.

The claimant's work related injury at issue is a right knee injury; therefore the claimant's injury is considered a scheduled injury. See Ark. Code Ann. §11-9-521(a). For a scheduled injury, a claimant is entitled to temporary total disability benefits until her healing period ends or until she returns to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2002). The healing period continues until the injured employee is as far restored as the permanent character of the injury will permit. The healing period ends once the

underlying condition has become stable and when nothing further in the way of medical treatment will improve the permanent character of the injury. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The persistence of pain is not sufficient, by itself, to extend the healing period provided that the underlying condition has stabilized. Id.

In the present case, Dr. Mulhollan has proposed additional treatment, including injections, and possible arthroscopy, intended to improve the permanent nature of Ms. Kelley's knee injury. Ms. Kelley has not yet received her doctor's proposed treatment because she cannot afford the treatment herself, and the respondents have refused to provide it. Therefore, I find that the claimant has established by a preponderance of the evidence that at the time of the hearing she remained within the healing period for her work-related knee injury.

I note that after her injury in April, Ms. Kelley was able to return to work for the rest of April, in May, and in June, apparently missing some but not many days from work because of knee symptoms. However, a preponderance of the evidence establishes that Ms. Kelley's symptoms only grew worse, ultimately resulting in her treatment described above

from Dr. Johnson, Dr. Mulhollan and Dr. Wilson. In addition, Ms. Kelley credibly testified that she could essentially no longer work after August 3, 2004, although she attempted to return to work on August 10, 2004 and on August 24, 2004. Under circumstances where Ms. Kelley's work-related injury became increasingly symptomatic until she finally stopped working in August of 2004, I find that a preponderance of the evidence establishes that Ms. Kelley failed in her attempt to return to work with a knee injury in April, and I find that Ms. Kelley has established by a preponderance of the credible evidence that her inability to work beginning in August of 2004 is directly attributable to her April 18, 2004 knee injury. Under these circumstances, I understand that Ms. Kelley's failed attempt to return to work between April and August of 2004 is not a bar to her claim for temporary total disability benefits for a scheduled injury beginning on August 4, 2004. See Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002); Farmers Coop. v. Biles, 77 Ark. App. 1, 69 S.W.3d 899 (2002). Therefore, I find that the claimant has established by a preponderance of the credible evidence that she is entitled to temporary total disability compensation beginning August 4, 2004 and continuing through the date of

the hearing until a date yet to be determined. The respondents are of course entitled to an offset against that liability based on any wages which Ms. Kelley may have received as a result of her attempts to try to return to work on August 10, 2004 and again on August 24, 2004.

The 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). The claimant must prove by a preponderance of the evidence that she is entitled to medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.3d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present case, the additional medical treatment proposed by Dr. Mulhollan and agreed to by Dr. Wilson appears to be appropriate for, and causally related to, Ms. Kelley's persistent April 18, 2004 knee injury. The respondents are therefore liable for previous medical treatment documented in the record, and are responsible for continued reasonably necessary medical treatment for Ms. Kelley's right knee injury.

The parties have stipulated that the respondents controverted this claim in its entirety, I therefore find that the claimant's attorney is entitled to a 25% attorney's fee on any indemnity benefits to which Ms. Kelley may become entitled as a result of the findings set forth below, said indemnity benefits including but not limited to the period of temporary total disability compensation discussed herein for the period beginning August 4, 2004 through the date of the hearing and to a date yet to be determined.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the employee-employer relationship existed on April 18, 2004, and at all times pertinent hereto.

2. Respondents controverted this claim in its entirety.

3. The parties stipulate that the claimant's temporary total disability compensation rate is \$242 per week.

4. The claimant has established by a preponderance of the credible evidence that she sustained a compensable right knee injury on April 18, 2004.

5. The claimant has established by a preponderance of the credible evidence that she is entitled to temporary total disability compensation beginning on August 4, 2004

and continuing to a date yet to be determined. Respondents are entitled to a credit for any wages paid to Ms. Kelley for her additional attempts to return to work after August 4, 2004.

6. The claimant has proven by a preponderance of the evidence that the medical treatment that she has received by and at the direction of Dr. Johnson, Dr. Mulhollan, and Dr. Wilson has been reasonably necessary for and causally related to treatment of her April 18, 2004 work-related injury.

7. The respondents are also responsible for additional reasonably necessary medical treatment for the claimant's compensable injury.

8. The claimant's attorney is entitled to a 25% controverted attorney's fee on all indemnity benefits to which the claimant may become entitled as a result of her compensable knee injury, including but not limited to the period of temporary total disability discussed in Finding No. 5 above.

AWARD

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to a 25% attorney's fee as discussed herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge