

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210188

TIMOTHY O'NEAL

CLAIMANT

SUGAR HILL FARMS

RESPONDENT

WESTPORT INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JANUARY 19, 2005

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

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by WILLIAM FRYE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on November 16, 2004, in Fort Smith, Arkansas. The deposition of Dr. Jeffrey Evans was taken on November 8, 2004, and has been admitted (subsequent to the hearing as Respondent's Exhibit No. 1).

A pre-hearing order was entered in this case on September 8, 2004 . This pre-hearing 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 pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. On December 14, 2001, the relationship of employee-employer-carrier existed between the parties.
2. On December 14, 2001, the appropriate weekly compensation rates were \$ 300.00 for total disability and \$225.00 for permanent partial disability.
3. On December 14, 2001, the claimant sustained compensable injuries to his right knee and right wrist.
4. There is no dispute over the payment of medical expenses incurred through July 8, 2004.

5. There is no dispute over the payment of temporary total disability benefits accruing through July 8, 2004.

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

- I. The claimant's entitlement to the additional medical services provided him by and at the direction of Dr. Jeff Evans on and after July 9, 2004.

In regard to these issues, the claimant contends that surgery has been recommended by Dr. Jeff Evans regarding the claimant's right knee and that the claimant's compensable injury has necessitated the surgery.

In regard to these issues, the respondents contend that the claimant suffered a compensable injury to his knee and wrist on December 14, 2001. The claimant underwent arthroscopic surgery on his knee with Dr. Evans. This surgery was done in April 2003. Subsequent to this, the claimant had full range of motion of the knee and reached MMI on July 22, 2003 with no permanent impairment. On December 11, 2003, the claimant came back in to see Dr. Evans with complaints of low back problems but no mention of the knee. The claimant then saw Dr. Evans on February 24, 2004, with a history of the claimant's knee locking up for about six weeks. Dr. Evans also noted that the claimant was having patellar problems for the last six weeks. Dr. Evans, in a report, indicated that he could not say that the claimant's current knee problem was related to the compensable injury. The respondents contend that they have paid all appropriate indemnity benefits and medical.

DISCUSSION

_____The central issue in this case is the claimant's entitlement to additional medical services provided him for right knee difficulties by and at the direction of Dr. Jeffrey Evans, on and after July 9, 2004. The burden rests upon the claimant to prove his entitlement to these benefits. In order to meet this burden, he must show that these disputed medical services represent "reasonably necessary medical services" as that term is defined by the Act. Medical services are "reasonably

necessary” when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

The medical evidence reveals that the claimant has a longstanding history of osteoarthritis with severe arthritic changes involving a number of joints, one of which is his right knee. X-rays, taken on August 28, 2000, showed the presence of degenerative changes involving the claimant’s right knee. In his operative report of October 11, 2000, Dr. Evans also noted the presence of a Grade II chondromalacia of the patella and Grade III chondromalacia of the medial femoral condyle. During this surgical procedure, these degenerative changes were addressed along with the claimant’s meniscal tear.

The evidence presented in this case also shows that the claimant has experienced multiple injuries involving his right knee and has experienced difficulties with this portion of his body for a considerable period of time. The records of Cooper Clinic reveal that the claimant had a history of multiple injuries involving his right knee, as early as August 25, 1986. The records of Dr. Evans show that in August of 2000, the claimant sustained another significant injury to his right knee, involving a cow. This injury resulted in surgery by Dr. Evans on October 11, 2000. Another injury to the claimant’s right knee occurred in December of 2000, when he purportedly slipped on some ice. The claimant continued to experience difficulties with his right knee and was under active medical treatment for these complaints through at least May 10, 2001.

On December 14, 2001, the claimant sustained the compensable injury that gives rise to this claim. Although this compensable injury was initially diagnosed as a medial meniscus tear, the arthroscopic surgery revealed only a posterior horn lateral meniscal tear and the claimant’s continuing degenerative joint disease of the right knee, which included Grade II to Grade III chondromalacia of the patella, Grade II to Grade III chondromalacia of the lateral femoral condyle and lateral tibial plateau. During the surgical procedure, the claimant’s meniscal tear and the degenerative changes in the right knee were both addressed. In a report dated April 16, 2002, Dr. Evans stated that the claimant had reached MMI (maximum medical improvement), in regard to his

compensable right knee injury, and had no permanent physical impairment as a result of this injury. He discharged the claimant from further care for his right knee, but referred him for continued treatment of his compensable wrist injury by Dr. Thomas Frazier.

The claimant sought no further medical treatment for complaints involving his right knee, until he returned to Dr. Evans, on October 3, 2002. At that time, Dr. Evans noted that the claimant's right knee difficulties had increased, "as he had been doing a lot of traveling on the week ends." During this time, the claimant had also continued under treatment for his compensable left wrist injury and apparently for an employment related injury to his back.

On January 13, 2003, the claimant returned to Dr. Evans for what Dr. Evans noted as "follow up, right knee degenerative joint disease, doing better." At that time, Dr. Evans recommended continued quadricep strengthening and showed the claimant how to maintain his leg while traveling, in order to decrease the pressure behind his knee cap. The claimant was directed to return in three months.

On May 2, 2003, the claimant returned to Dr. Evans with complaints of increased difficulties with his right knee. Another MRI of the right knee was performed on May 19, 2003, at the request of Dr. Evans. In his report of May 27, 2003, Dr. Evans interpreted this MRI as showing only degenerative joint disease of the right knee and appears to attribute the claimant's continued symptoms to this condition. In his report of July 22, 2003, Dr. Evans diagnosed the claimant's difficulties as being attributable to right knee degenerative joint disease and made no particular mention of the claimant's previous compensable injuries.

In a letter dated October 21, 2003, Dr. Evans states:

"I have treated Mr. O'Neal for his right knee degenerative joint disease and last saw him on July 22, 2003. He is currently at maximum medical improvement with regard to his right knee. There will be no permanent partial impairment rating generated from the right knee."

The claimant again returned to Dr. Evans, on February 24, 2004. At that time, Dr. Evans noted that the claimant was in for follow up for his right knee degenerative joint disease, due to

increased difficulties over the past six weeks. He recorded that the claimant is now experiencing symptoms where his right knee cap feels as though it is dislocating.

The claimant's next visit with Dr. Evans was on July 7, 2004. It is at this point that liability for the medical services became disputed. On this visit, Dr. Evans again indicated that the purpose of this visit was for follow up of the claimant's right knee degenerative joint disease and patellar instability. He noted that he claimant was experiencing continued subluxation of his patella or knee cap, despite wearing an appropriate brace. At that point, the claimant was scheduled for a right knee arthroscopic lateral retinacular release of the knee cap. This surgery was ultimately performed on July 9, 2004.

In a report to the respondents dated July 6, 2004, Dr. Evans states:

"As you know he (the claimant) is scheduled for a right knee arthroscopic lateral retinacular release. He has a long history of symptomatic right knee degenerative joint disease for which he has been followed from a workers' compensation case. He has developed patellar instability since the first part of 2004. There has been no specific injury to his knee during this time; therefore, I cannot relate his patellar instability to a new injury or to his old symptomatic right degenerative joint disease. I think that this right knee degenerative joint disease has progressed to the point that his patella has become unstable. I know that this does not really answer the question about when his patellar instability developed and what caused his patella instability, but I am afraid that I do not have a specific injury or time to hang on to the patellar instability."

In his deposition, Dr. Evans stated that it is his opinion that the claimant's continuing symptoms with his right knee are all related to the compensable injury of December 14, 2001 (D.22). He further stated that he considered that all of the treatment he has provided the claimant, including the surgery on July 9, 2004, was necessitated by or related to the claimant's compensable injury (D.22).

However, the evidence clearly shows that the treatment provided the claimant on and after July 7, 2004, by Dr. Evans (particularly the last surgery was necessitated solely by the claimant's patellar instability. In his deposition (as in his written report of July 6, 2004), Dr. Evans clearly has difficulty with the etiology of the claimant's patellar instability. He indicates that this condition is rare

and is usually associated with a specific incident of trauma. He states that, in his practice, he has never seen degenerative joint disease (DJP) produce this condition (D.47). He also states that it would be very very rare for an injury “two years out” to produce this condition. He only opines that this patellar instability developed gradually “in piece meal fashion,” as a result of the compensable injury, because there is no history of a more specific mechanism of injury to tie it to (D.43, D. 48).

After consideration of all the evidence presented, it is my opinion that the medical treatment provided the claimant for his right knee by Dr. Evans on and after July 7, 2004, was necessitated by or connected with his compensable knee injury of December 14, 2001. The greater weight of the evidence show that this treatment was necessitated by the claimant’s patellar instability. I do not find that the greater weight of the evidence establishes the existence of any causal relationship between this condition and the claimant’s compensable injury.

The opinion of Dr. Evans that such a causal relationship, although highly unlikely, must exist simply because he has no other history of “a more specific mechanism of injury to tie it to” is not persuasive. Obviously, he ignores the potential mechanism of injury described by the claimant that his knee cap first dislocated when he had his knee twisted around putting a sock on his right foot. From personal experience, this is not an easy feat for a large individual and would place some stress on the knee joint. Dr. Evans opinion also over looks the possibility of other trauma to the claimant’s right knee from his day to day activities that while not unusual would still place considerable stress on the knee.

As the claimant has failed to prove by the greater weight of the credible evidence that the medical services he required from Dr. Evans for his right knee difficulties, on and after July 6, 2004, were necessitated by or connected with his compensable right knee injury of December 14, 2001, such medical services would not represent “reasonably necessary medical services” as that term is used in the Act. The respondents cannot be held liable, under Ark. Code Ann. §11-9-508, for the expense of these medical services. The present claim for these services must be denied and

dismissed.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On December 14, 2001, the relationship of employee-employer-carrier existed between the parties.
3. On December 14, 2001, the appropriate weekly compensation rates were \$300.00 for total disability and \$225.00 for permanent partial disability.
4. On December 14, 2001, the claimant sustained various compensable injuries, one of which was to his right knee.
5. There is no dispute over the payment of medical expenses incurred through July 8, 2004. There is no dispute over the payment of temporary total disability benefits accruing through the same date.
6. The claimant has failed to prove by the greater weight of the credible evidence that the medical services provided him for his right knee difficulties by and at the direction of Dr. Jeffrey Evans, on and after July 9, 2004, represent "reasonably necessary medical services" for his compensable right knee injury. Specifically, he has failed to prove by the greater weight of the credible evidence that such medical services were necessitated by or connected with his compensable right knee injury.
7. The respondents have controverted the claimant's entitlement to the payment of expenses incurred for medical services provided him for his right knee difficulties by and at the direction of Dr. Jeffrey Evans, on and after July 9, 2004.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss the present claim for additional benefits.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge