

**BEFORE THE ARKANSAS WORKERS' COMPENSATION  
COMMISSION**

**CLAIM NO. F301506**

**DAVID RIDDLE, EMPLOYEE**

**CLAIMANT**

**MAVERICK TRANSPORTATION, INC.,  
EMPLOYER**

**RESPONDENT**

**LIBERTY MUTUAL FIRE INSURANCE CO.,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED JANUARY 4, 2005**

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 6, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant appeared pro se.

Respondents represented by Mr. David C. Jones, Attorney at Law, Little Rock, Arkansas.

A hearing was held on October 6, 2004, to determine claimant's entitlement to additional benefits.

The parties stipulated to the existence of the employee-employer relationship on February 6, 2003. It was further stipulated that the claimant's earnings were sufficient to entitle him to weekly indemnity benefits of \$440.00 for temporary total disability and \$330.00 for permanent partial disability benefits. It was stipulated that respondents initially accepted and paid benefits for claimant's injury as a temporary aggravation of a pre-existing condition. The parties further stipulated that claimant

had previously litigated a workers' compensation claim in Virginia, involving an alleged August 8, 2002, work-related injury, which was denied and dismissed.

Claimant contends that he is still having right knee problems, that he is still in need of medical treatment, and that he still cannot return to work completely. He contends that he is, therefore, entitled to additional benefits as a result of the February 6, 2003, incident.

Respondents contend that, based upon the Independent Medical Evaluation (IME) report, claimant has resumed his baseline, pre-existing condition and is, therefore, not entitled to additional benefits. Respondents controvert all additional benefits. In the event additional benefits are awarded, however, respondents request an offset for the claimant's long-term disability benefits that are currently being paid.

#### **STATEMENT OF THE CASE**

Claimant was a truck driver for respondent employer. Claimant testified, and medical records indicate, that he first injured his right knee on August 9, 2002. As a result, claimant had surgery on that knee on August 20, 2002, and had a later, second surgery on the same knee in November of 2002. The parties stipulated that although claimant filed a workers' compensation claim in Virginia for this injury, the claim was denied and dismissed; moreover, that finding was affirmed on appeal.

In regard to the instant claim before this Commission today, claimant asserts that he injured the same knee when he fell on the ice while working for respondent-

employer on February 6, 2003. Respondents accepted this claim as a temporary aggravation of claimant's pre-existing condition of his prior August 8, 2002, incident. Respondents paid for claimant's treatment, including a third surgery to claimant's knee on May 9, 2003. Respondents further paid claimant temporary total disability benefits through February 2004, at which point respondents received the IME report from Dr. Pearce and ceased benefits.

In his February 25, 2004, IME report, Dr. Charles Pearce, Jr., opined that claimant was at maximum medical improvement and that his February 6, 2003, injury did not cause any permanent partial disability above and beyond what had already occurred for claimant with his previous non-work-related injury. Dr. Pearce opined that claimant's symptoms are "clearly" primarily related to his pre-existing injury and that any work restrictions he has are based on the fact that his leg is so weak, but not related to his on-the-job injury of February 6, 2003. Dr. Pearce opined that the tibial elevation procedure another doctor had proposed would be related to claimant's pre-existing problem, but that, in his (Dr. Pearce's) opinion, that procedure is "not indicated for this man."

Dr. Pearce stated:

Clearly, this man has a problem with his leg. It is my opinion that it *pre-existed his reported on-the-job injury* as outlined multiple times. As far as further diagnostic or treatment modalities for him, I think that those are certainly indicated; but, again *not because of his workman's comp injury*.

[Emphasis added.]

Claimant, in his case-in-chief, introduced as exhibits letters from Dr. Michael Diminick of Lynchburg, Virginia, as well as an IME report from Dr. Richard Eckert of Roanoke, Virginia. Dr. Diminick was claimant's treating physician. His short letter of March 17, 2003, simply states that claimant had been under his care his for right knee injury, that he believes claimant was "essentially at maximum improvement from the previous arthroscopy" before his February 6, 2003, injury, and that he would deem this a "new injury."

Dr. Eckert's April 16, 2003, IME report also opines that this represents a new injury, "inasmuch as he had returned to work and was functioning." Dr. Eckert continues:

In spite of the fact that this is the same knee as was previously injured and operated on twice, he returned to work in March, *which makes me shade my opinion in the direction [of] a new injury* in a previously operated knee. *Again, I do not have very much in the way of medical material or any imagery on which to base my judgment.* Clearly, he is not improving with conservative therapy. He does not wear his knee immobilizer. He says he has worn that out. I think that re-operation makes sense in order to get this gentleman back to work. I hope this is helpful.

[Emphasis added.]

Claimant admitted that he continued to have problems with a "popping" sensation and grinding, even after he was released to return to work following his

previous injury and previous surgeries before the February 6, 2003, injury. The medical report from Dr. William Cole, the Ohio doctor who first saw claimant after his February 6, 2003, injury, indicates that claimant was released to return to work with restrictions on February 11, 2003. Claimant denies knowledge of this.

Claimant's medical records, as well as notes from claimant's physical therapy indicate that claimant's subjective complaints were inconsistent with the objective findings and that he was found to give inconsistent, poor effort. Claimant even admitted that the physical therapist had talked to him about using his cane on the wrong arm.

Medical records indicate that claimant has a symptomatologic history of his complaints not matching up with the objective findings. In fact, Dr. James Dunstan, Jr., of Lynchburg, Virginia, noted back in December of 1999, "I feel the patient has probably issues of secondary gain." Dr. Dunstan recommended "continued psychologic counseling." However, claimant denied that any doctor had ever recommended psychologic counseling or that he had ever participated in any type of psychologic counseling or treatment. Claimant denied secondary gain as a motivation.

Claimant testified that he is presently receiving \$2,187.50 per month in long-term disability benefits. Claimant testified that he has been to the unemployment office, seeking vocational training, and that he has applied to work at several places;

but, he stated, “because of my condition won’t nobody touch me.” Claimant admitted, however, that while he was on light duty with respondent-employer, he was able to do the sedentary, clerk-type jobs that they gave him. He, however, has not applied for those types of jobs since leaving respondent-employer.

### **FINDING OF FACT**

Claimant has failed to prove entitlement to additional benefits.

### **DISCUSSION**

The Arkansas Court of Appeals has held that medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. *See generally, Georgia-Pacific Corp. v. Dickens*, 58 Ark. App. 266, 950 S.W.2d 463 (1997); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983); *Tiner v. Total Petroleum*, Full Workers' Compensation Commission, Opinion filed April 3, 2003 (W.C.C. F104990). In addition, an employer may remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983). (“Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.”) A claimant, however, must prove that the additional treatment he desires is reasonable and

necessary, in relation to his compensable injury. In this case, claimant has failed to do so.

The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Jim Walter Homes and Travelers Ins. v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003). Where there is conflicting medical evidence in a case, it is well settled that it is the Commission's duty to resolve such conflicts. *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

Questions of credibility and the weight and sufficiency to be given evidence are matters within the province of the Commission. *See Smith-Blair, Inc. v. Jones, supra; Swift-Eckrich, Inc. v. Brock*, 63 Ark. App. 188, 975 S.W.2d 857 (1998). The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Smith-Blair, Inc. v. Jones, supra; Arnold v. Tyson Foods, Inc.*, 64 Ark. App. 245, 983 S.W.2d 444 (1998). Furthermore, it is well established that it is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and

medical evidence. *Smith-Blair, Inc. v. Jones, supra; Maverick Transp. v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000).

In this case, claimant has introduced one short note from his treating physician, Dr. Diminick, opining that the injury is a “new injury.” That opinion, however, was given on March 17, 2003, during which time claimant’s injury had been accepted as compensable, and benefits were being paid.

Further, Dr. Eckert’s opinion is not stated within a reasonable degree of medical certainty. Dr. Eckert admitted in his IME report that he did not have very much in the way of medical material or any imagery on which to base his judgment. Further, he stated that the fact that claimant had returned to work after having two previous surgeries on the same knee made him “shade [his] opinion in the direction [of] a new injury.” This statement of expert opinion certainly lacks the definiteness required to meet the claimant’s burden of proof and amounts to nothing more than a statement of theoretical possibility. *See Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

Dr. Pearce, on the other hand, offers his opinion with certainty, stating that claimant’s current symptoms are “clearly” primarily related to his pre-existing injury and *not* to his workers’ compensation injury of February 6, 2003.

In this examiner's opinion, a preponderance of the credible evidence fails to establish claimant's entitlement to additional benefits. For the above-stated reasons, this claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge