

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F208057

BERNESTINE WILSON, EMPLOYEE	CLAIMANT
GEORGIA-PACIFIC CORPORATION, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, CARRIER	RESPONDENT

OPINION FILED MAY 3, 2005

Submitted on the record in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN.

Claimant represented by the HONORABLE BRIAN H. RATCLIFF, Attorney at Law, El Dorado, Arkansas.

Respondents represented by the HONORABLE SUSAN FOWLER, Attorney at Law, Little Rock, Arkansas.

ISSUES

This claim was submitted on the record in lieu of a hearing to determine the claimant's entitlement to additional medical treatment, additional permanent partial disability benefits and attorney's fees.

At issue is the validity of the anatomical impairment rating pursuant to Ark. Code Ann. §11-9-519(h), §11-9-521 and Rule 34.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on April 6, 2002 at which time the claimant sustained a compensable right knee injury at a compensation rate of \$425.00/\$319.00. Medical expenses and temporary total disability benefits (until April 23, 2003) and permanent partial disability benefits (equivalent to 15%, based on Dr. Daniel's assessment) have been paid.

The claimant received a change of physician from Dr. Daniels to Dr. Martin by order of the Medical Cost Containment Division dated July 30, 2004. The claimant seeks payment of continuing

medical treatment with Dr. Martin, a 50% impairment rating, and attorney's fees.

The respondents contend Dr. Martin's treatment is unreasonable and unnecessary. They further contend the rating does not conform to the AMA Guidelines or to the law. Alternatively, in the event of an award, the respondents are entitled to a credit of \$8,286.20 paid in permanent partial disability benefits and do not owe attorney's fees on either the rating or medical treatment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript, along with the deposition of Dr. Ken Martin taken January 6, 2005.

The claimant, age 49 (D.O.B. June 27, 1955) injured her right knee when she fell down some steps at work. She tried to continue working with conservative treatment but remained symptomatic. After an MRI scan on June 14, 2002 she was diagnosed with a "Grade III sprain (tear) of the LCL, Grade II sprain of the FCL, complete tear of the lateral meniscofemoral ligament, and tearing and deformity of the lateral meniscus as described above, (with) oblique tear of the slightly deformed and minimally displaced anterior horn of the medial meniscus." Bursitis and joint effusion were also noted.

The claimant came under the care of orthopedic surgeon, Dr. Dwayne Daniels who performed arthroscopic surgery on June 24, 2002. He also prescribed medication, physical therapy and injections.

The claimant remained symptomatic with pain and swelling. A second surgery was performed on September 24, 2002 (unicondylar arthroplasty and partial patellectomy). She remained symptomatic with pain, swelling, reduced range of motion and discoloration of the foot. Dr. Daniels prescribed medication and more physical therapy.

In his correspondence of December 20, 2002, Dr. Daniels expressed concern over the claimant's dependence on pain medication and her lack of effort at physical therapy. The claimant told him she planned to apply for Social Security Disability based on her knee problems as well as a preexisting abdominal and liver condition.

The claimant returned to Dr. Daniels on March 19, 2003 with much improvement. She told the doctor she had fluid aspirated from her knee at North Monroe Hospital.

Dr. Daniels evaluated the claimant again on April 23, 2003 after x-rays and a Functional Capacity Evaluation. He released her to return to work in the “sedentary-light sedentary” classification. He noted she walked with a cane for her antalgic gait and back pain. Records show the claimant also received treatment for pain at the emergency room and from the family physician.

On July 2, 2003 Dr. Daniels assessed a 50% lower extremity impairment rating based on the 5th Edition of the AMA Guidelines based on a “fair” result from surgery with “mild to moderate occasional pain.” He prescribed more medication and physical therapy.

Dr. Daniel examined the claimant on September 12, 2003 noting quadriceps weakness and prescribing a stimulator. X-rays showed the prosthesis in good position. The claimant voiced concerns about her financial situation and inability to return to work.

The claimant returned on March 12, 2004, with complaints of pain and swelling and the onset of sciatica. Dr. Daniel doubted the claimant’s effort on range of motion testing but continued to prescribe medication.

The claimant consulted Dr. Ken Martin on September 29, 2004. His report summarizes her medical treatment. He also repeated x-rays and conducted a physical exam. Dr. Martin found evidence of welling, degenerative changes and a cyst. He recommended a bone scan to determine if additional treatment was necessary.

The claimant saw Dr. James Mulhollan on January 24, 2005. He examined the claimant and repeated x-rays, finding evidence of osteopenia and justification for her limited joint motion. He recommended a total knee replacement.

During my conversation with this patient, I learned that she saw Dr. Kenneth Martin about a year ago. Apparently, he had the same opinion as I do, i.e. that the knee needed to be surgically revised. For some reason she was never authorized to see him about that.

IMPAIRMENT RATING

Originally, Dr. Daniel assessed a 50% rating to the lower extremity in a report dated July 2,

2003. He apparently used the 5th Edition of the AMA Guidelines. Attorney Radcliff wrote the doctor on December 22, 2004 and asked him to clarify the rating using the 4th Edition. Scrawled at the bottom of the letter is, "same numbers for 4th Edition p. 85, Table 64".

On May 5, 2003 the adjuster wrote Dr. Daniels regarding the impairment rating. The number, "15%" is written in with no date, signature or initials, nor stamp from the physician's office. No explanation is given for Dr. Daniel's change in his opinion from 50 to 15%.

In his deposition, Dr. Martin testified he saw the claimant for a second opinion because of the pain she was experiencing from a partial knee replacement. The Dr. explained that two common causes of symptoms after unicompartmental arthroplasty are chondromalacia (damaged cartilage on the outer part of the kneecap) and loosening of the component on the tibia or the shin bone. A physical exam of the claimant revealed swelling, a crunching noise (crepitus) at the kneecap and x-rays showed some possible loosening of the components.

Dr. Martin explained the three stages of chondromalacia (Tr. p. 8) which can be caused by acute trauma or a degenerative process. The condition was present during Dr. Daniel's treatment of the claimant but Dr. Daniel didn't describe his exact findings in the operative report. Dr. Martin speculated that the claimant's condition was probably a preexisting degenerative condition (Tr. p. 9), and the second surgery did not address this condition.

Dr. Martin recommended a bone scan because it could show an abnormal uptake around a loose implant. The total knee replacement would hopefully address her knee pain. Dr. Martin admitted her pain could be associated with a lack of exercise, quadricep weakness, and a degenerating chondromalacia. The procedure is considered major surgery and the claimant would have to be motivated to actively pursue rehabilitation.

Attorney Fowler:

...can you state with any reasonable degree of medical certainty that that condition (chondromalacia) is related to her injury that she suffered ... 5-6-02?

Dr. Martin:

I'm not sure it's related to her injury back then. It seems like that was there ahead of time by what he

(Dr. Daniels) described. Most of the findings on her initial MRI pertained to the lateral compartment where she had the lateral replacement. (Tr. p. 15)

Also during his deposition, Dr. Martin addressed the impairment rating by comparing the 4th and 5th Editions of the AMA Guidelines. Dr. Martin agreed with Dr. Daniels' rating of 50% using page 547 of the 5th Edition (Tr. p. 19-20). The same rating results from using Table 64 at p. 85 of the 4th Edition which assigns a 50% rating for a "fair" result from a unicompartmental replacement. The ratings are the same in the 4th and 5th editions, (Tr. p. 20). The doctors did not provide any documentation on how they evaluated the point system referred to in the foot notes.

Dr. Martin indicated the categories of assessment ("good", "fair", "poor") for the surgical results was indeed subjective, and included complaints of pain, lack of range of motion and loss of strength measured by passive testing. The rating table for the knee refers the physician to two other tables, the hip on page 87 and the pelvis on page 131. The rating for the hip does have several subjective components which were addressed in Charles Davis v. Pulaski Technical College, Administrative Law Judge opinion August 31, 2001, at p. 6-8 of the decision, Full Commission opinion #F007628, August 22, 2002. Without repeating the mathematical analysis in the Davis case, suffice it to say that there is an inverse relationship between the point system and the impairment rating, and a value must be assigned to all the categories (even those considered subjective) in order to accumulate enough points to qualify for the three categories of "good", "fair", and "poor".

However, after considering the categories and the claimant's medical history, I find it is appropriate that she be placed in the "fair" or 50% rating bracket. Her result was not "good" in that the swelling and pain persisted after two surgical procedures and both Dr. Mulhollan and Martin recommend more treatment, a total knee replacement. Her result was not "poor" in that she could still perform light duty, walk with assistance, participate in physical therapy and improve her range of motion.

The claimant has remained symptomatic with objective findings since her injury. Although she may have had some minor preexisting degenerative changes, she was able to work prior to the

compensable injury. This preexisting condition combined with her compensable injury to produce disability, impairment and the need for medical treatment. Pearline Williams v. L & W Janitorial, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (2004).

Therefore, I find the treatment recommended by Dr. Martin, a total knee replacement, is reasonable and necessary treatment for the compensable injury. The respondents did not voluntarily accept this claim for additional permanent partial disability benefits and continuing medical treatment until the claimant hired counsel and requested a hearing. Aluminum Company of America v. Henning, 260 Ark. 699, 543 S.W.2d 480 (1976). Accordingly, I find both indemnity benefits and medical expenses have been controverted.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on April 6, 2002 at which time the claimant sustained a compensable right knee injury at a compensation rate of \$425.00/\$319.00.
2. The respondents are directed to pay permanent partial disability benefits based on Dr. Martin's assessment of a 50% rating to the lower extremity, (subject to a credit for the 15% previously paid).
3. Respondents are directed to pay Dr. Martin's medical expenses within thirty days of receipt pursuant to Rule 30, as the claimant has shown that treatment to be reasonable, necessary and related to the compensable injury.
4. The respondents are directed to pay the court reporter's fees and expenses associated with transcribing this hearing within thirty days pursuant to Commission Rule 20.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by

the respondent, directly to the claimant's attorney.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above along with their proportionate share of attorney's fees. 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge