

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408417

ROBERT BRYANT	CLAIMANT
SARA LEE CORPORATION	RESPONDENT
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 24, 2006

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

Claimant represented by GARY UDOUJ, Attorney, Fort Smith, Arkansas.

Respondents represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on January 17, 2006, in Fort Smith, Arkansas. A pre-hearing order had been entered in this case on December 14, 2005. 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. Immediately prior to the commencement of the hearing, the parties announced that an amendment should be made in regard to the third stipulation, that being to reflect that the claimant sustained compensable injuries to both knees in the employment related accident of June 7, 2004, rather than merely the right. A copy of this pre-hearing order with that amendment noted thereon, has been made Commission's Exhibit No. 1 to the hearing.

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

1. On June 7, 2004, the relationship of employee-employer-

carrier-TPA existed between the parties.

2. The appropriate weekly compensation benefits are \$377.00 for total disability and \$283.00 for permanent partial disability.
3. On June 7, 2004, the claimant sustained various compensable injuries including compensable injuries to his both knees.
4. There is no dispute over the payment of medical expenses incurred through the initial evaluation by Dr. Greg Jones.
5. There is no dispute over temporary total disability benefits, at the present time.
6. The respondents have accepted liability for permanent partial disability benefits for a permanent physical impairment of 19% to the right leg below the hip with such benefits commencing to accrue on September 15, 2005.

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

1. The claimant's entitlement to additional testing and evaluation as recommended by Dr. Jones.

In regard to these issues, the claimant contends:

"Dr. Jones recommended continued medical care and treatment, including an MRI "with gadolinium enhancement" to evaluate the right knee further and an arthroscopic evaluation."

In regard to these issues, the respondents contend:

"Respondents deny that Dr. Jones' proposed treatment is reasonable and necessary treatment for the work related injury. Dr.

Jones, who first saw claimant September 26, 2005 (over one year post surgery) thinks claimant has a meniscus tear; however, when Dr. Bebout performed surgery on August 5, 2004 (two months post injury), he inspected the menisci on both sides of the knee and found them to be intact.”

#### DISCUSSION

\_\_\_\_\_The sole issue presented for resolution at the present time concerns the claimant’s entitlement to additional medical services for his compensable right knee injury, as recommended by his present treating physician, Dr. Greg T. Jones. The burden rests upon the claimant to prove that these additional medical services represent “reasonably necessary medical services” for his compensable right knee injury.

In the way of background, the claimant’s prior treating physicians for his compensable knee injuries was Dr. Robert G. Bebout, an orthopaedic surgeon. Dr. Bebout performed a corrective surgery on the claimant’s right knee on August 6, 2004. At that time, he surgically repaired a complete tear of the claimant’s anterior cruciate ligament. At the time of this arthroscopic surgery, Dr. Bebout noted possible damage to the central portion of the medial femoral condyle, but specifically stated:

“Menisci were intact on both sides.”

Although the claimant continued to complain of difficulties with his right knee, Dr. Bebout ultimately released him from further treatment and assessed a permanent physical impairment of 19% to the leg for the claimant’s compensable right knee injury on September 14, 2005.

The claimant sought and obtained a change of physicians from Dr. Bebout to Dr. Greg Jones, who is also an orthopaedic surgeon. Dr. Jones initially evaluated the claimant on September 26, 2005. On his clinical examination, he found evidence of a lateral impingement syndrome of the claimant's right knee (a positive Apley and positive McMurray meniscal rotation signs along with extreme tenderness to direct palpation along the posterior lateral corner of the right knee). He stated that these findings were consistent with impingement, possibly due to a meniscal fragment from a lateral meniscus tear or from a portion of the previous graft. He also mentions a previous MRI that showed a possible lateral meniscal tear. However, the only MRI introduced into evidence that indicates a possible lateral meniscal tear was an MRI of the claimant's left knee. This possible defect of the left knee was noted by Dr. Bebout in his initial evaluation of July 9, 2004. Although voluminous medical records were introduced (many of which have no relevance of the issue at hand), the record contains no report of the findings of any MRI on the claimant's right knee.

Clearly, "reasonably necessary medical services" include those medical services required to reasonably insure an accurate diagnosis of the nature and extent of the compensable injury. Obviously, it is the expert opinion of Dr. Jones that a gadolinium enhanced MRI and an exploratory arthroscopy is appropriate to diagnose the etiology of the claimant's continued complaints with his right knee. Dr. Jones is a highly competent orthopaedic surgeon with particular expertise in the area of medicine

associated with the treatment of knee injuries. There is no reason to believe that he would recommend any services that were not medically appropriate or necessary. It must also be noted that the services he recommended are of a type and nature commonly used to ascertain the nature and extent of injuries to the knee and the etiology of complaints such as those voiced by the claimant.

While I recognize that Dr. Bebout's previous operative notes record that he observed the menisci on both sides of the claimant's right knee to be intact, this in and of itself does not contradict Dr. Jones diagnosis of a lateral impingement on the claimant's right knee. As Dr. Jones indicates this impingement syndrome could have a cause other than a lateral meniscal tear. I would also note that this would not be the first time that a small tear or fray of a meniscus went unobserved during an arthroscopic procedure directed toward treatment of another portion of the joint.

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence establishes that the diagnostic testing recommended by Dr. Jones represents reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Clearly, these services are connected with the claimant's compensable right knee injury and resulting continuing complaints. They are of a type and nature commonly recognized and employed as being medically appropriate in the diagnosis of the etiology of complaints such as those being experienced by the claimant. Finally, these services clearly have a reasonable expectation of accomplishing their intended goal of ascertaining

the cause of the claimant's continued right knee difficulties.

Therefore, under the provisions of Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these diagnostic services. This liability is subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On June 7, 2004, the relationship of employee-employer carrier-TPA existed between the parties.
3. On June 7, 2004, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$377.00 for total disability and \$283.00 for permanent partial disability.
4. On June 7, 2004, the claimant sustained compensable injuries to both knees.
5. There is no dispute over the payment of medical expenses incurred for services rendered to the claimant through the initial evaluation of Dr. Greg Jones on September 26, 2005.
6. The medical services recommended by Dr. Greg Jones, in the form of a diagnostic gadolinium enhanced MRI and a diagnostic arthroscopy of the claimant's right knee represent "reasonably necessary medical services" under Ark. Code Ann. §11-9-508, for the claimant's compensable right knee injury. Specifically, these medical services

have a purpose or goal that is connected with the claimant's compensable right knee injury and have a reasonable expectation of accomplishing this purpose or goal. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

7. There is no dispute, at the present time, over the payment of temporary total disability benefits. All such benefits accruing to date have been paid.
8. The respondents have also accepted liability for and have or are paying permanent partial disability benefits for a permanent physical impairment of 19% to the leg below the hip.
9. The respondents have accepted the claimant's entitlement to the diagnostic procedures recommended by Dr. Jones.
10. As no controverted benefits have been awarded directly to the claimant, no controverted attorney's fee can be awarded to his attorney.

ORDER

The respondents shall be liable for the expense incurred as the result of the diagnostic procedures by Dr. Greg Jones, in the form of a gadolinium enhanced MRI and exploratory arthroscopy of the right knee. This liability is subject to the medical fee schedule established by this Commission.

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IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge