

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F412880

JOSHUA CRANE, Employee	CLAIMANT
BUILT-WELL CONSTRUCTION COMPANY, Employer	RESPONDENT
CNA INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED OCTOBER 26, 2006

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by ADRIENNE KINCAID MURPHY, Attorney, Fayetteville, Arkansas.

Respondents represented by FRANK NEWELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 27, 2006, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on July 26, 2006, and a pre-hearing order was filed on July 27, 2006. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The relationship of employee-employer-carrier existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his left knee on December 2, 2004.
4. The respondent has paid some temporary total disability and medical.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to additional medical treatment; specifically, knee surgery proposed by Dr. Arnold.

2. Temporary total disability benefits from date of surgery.
3. Attorney fee.

The claimant contends that he is entitled to additional reasonable and necessary medical treatment; specifically, surgery to his left knee and post-operative rehabilitation. Claimant contends his left knee is injured to the extent that it requires surgery. In approximately June 2005 the claimant received the opinions of three physicians, and two agreed that surgery was necessary to repair the damage to his left knee. Respondents would not approve surgery, and in approximately July 2005 the claimant stopped receiving benefits of any kind from the respondent. Claimant contends that he is entitled to temporary total disability benefits during the recuperation period following the surgery until he is able to return to work. Finally, claimant contends he is entitled to a controverted attorney fee.

The respondents contend that as a result of claimant's compensable knee injury they have provided appropriate reasonably necessary medical care as well as appropriate temporary total disability benefits. The surgery proposed by Dr. Chris Arnold would not be reasonably necessary medical care and claimant is not entitled to an award of medical benefits for surgery by Dr. Chris Arnold.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe his demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on July 26, 2006, and contained in a pre-hearing order filed July 27, 2006, are hereby accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment as recommended by Dr. Arnold.

3. Respondent would be liable for any temporary total disability benefits resulting from surgery performed by Dr. Arnold, including an attorney fee as provided in A.C.A. §11-9-715.

FACTUAL BACKGROUND

The claimant is a 23-year-old man who previously underwent knee surgery on his left knee in 2001. Surgery at that time was performed by Dr. Mertz.

On December 2, 2004, while working for the respondent, the claimant suffered a compensable injury to his left knee when he fell off scaffolding while hanging drywall. Claimant was initially treated conservatively by Dr. Kendrick, but was subsequently referred to Dr. Chris Arnold for treatment. Claimant's condition was initially diagnosed as a knee sprain but the subsequent diagnosis was a left knee patellar dislocation. Dr. Arnold recommended conservative treatment including medication and a period of physical therapy. When the physical therapy did not alleviate claimant's condition, Dr. Arnold ordered an MRI scan which he interpreted as having findings consistent with a patellar disc location. Dr. Arnold subsequently recommended an arthroscopic procedure on the claimant's left knee. Subsequent to this recommendation by Dr. Arnold claimant has also been evaluated for second opinions by Dr. James Mulhollan, Dr. Mertz, and Dr. John Park.

Claimant has filed this claim contending that he is entitled to additional medical treatment; specifically, the surgery recommended by Dr. Arnold.

ADJUDICATION

Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. *Dalton v. Allen*

Engineering Company, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *White Consolidated Industries v. Galloway*, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable knee injury; specifically, surgery as recommended by Dr. Arnold.

Evidence relating to the issue of claimant's medical treatment consists of the opinions of four physicians, all of whom are specialists. The first opinion is that of Dr. Chris Arnold, the claimant's primary treating physician. In his report dated May 17, 2005, Dr. Arnold indicated that after his discussion with the claimant he would recommend that claimant undergo an arthroscopic procedure. Dr. Arnold indicated that if the procedure reveals a large chondral defect on the backside of the patella and no gross instability is present that would end the procedure. However, if there is no significant chondral injury and there is a significant lateral subluxation, Dr. Arnold recommended that the claimant undergo a tubercle transfer during this same arthroscopic procedure. Thus, the actual procedure performed by Dr. Arnold would be dependent upon his findings during the arthroscopic procedure itself.

In response to Dr. Arnold's recommendation respondent sent claimant to Dr. James Mulhollan for a second opinion. Dr. Mulhollan did not agree that a surgical procedure was necessary. Instead, Dr. Mulhollan has recommended that the claimant undergo rehabilitation of his quadriceps muscle which he believes is responsible for claimant's continued complaints.

Dr. Arnold has had the opportunity to review Dr. Mulhollan's opinion and in a letter dated June 24, 2005 respectfully disagreed with that opinion. Dr. Arnold indicated that it was his belief that claimant's condition was not the result of quadricep weakness but rather

is a result of the patella dislocation itself.

Claimant also was evaluated by Dr. John Mertz who performed the original surgery on claimant's left knee in 2001. Dr. Mertz agreed that claimant should undergo an arthroscopic procedure, but indicated that he would limit it to a debridement and chondroplasty of the patella and distal femur and trochlea. Dr. Mertz indicated that he would delay any surgery involving the tibial tubicle until the arthroscopic procedure had been performed and claimant's knee problems not corrected.

Finally, claimant has also been evaluated by Dr. John Park. Dr. Park in his report of July 20, 2005 indicated that he did not believe further therapy would correct claimant's problem and he agreed with Dr. Arnold's recommendation for surgery.

Thus, we have four opinions from four specialists regarding claimant's need for additional medical treatment. I find that the opinion of Dr. Arnold is credible and entitled to great weight. First, Dr. Arnold is the claimant's treating physician and he has had the opportunity to evaluate the claimant on a number of occasions. On the other hand, the remaining treating physicians have evaluated the claimant on only one occasion since the injury in December 2004. I also believe it is important to note that Dr. John Park has agreed with Dr. Arnold's recommended course of treatment. Finally, Dr. Mertz did not specifically disagree with Dr. Arnold's treatment. Instead, Dr. Mertz only indicated that he would perform an arthroscopic procedure involving debridement and chondroplasty before addressing the tibial tubicle. With respect to Dr. Mertz' opinion, I note that Dr. Arnold did indicate in his original recommendation that he would only address the tibial tubicle if such a procedure was supported by findings present during the arthroscopic procedure itself.

In summary, claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment. In this particular case, claimant is requesting medical treatment in the form of surgery as recommended by Dr. Arnold. I find that Dr. Arnold's recommended treatment is reasonable and necessary for claimant's

compensable injury. Therefore, respondent is liable for payment of the surgery as recommended by Dr. Arnold.

Claimant has also requested payment of temporary total disability benefits beginning from the date of the surgery and continuing through a date yet to be determined. I find that this issue is premature at this time since claimant has not yet undergone surgery. It certainly seems reasonable to believe that claimant will be entitled to a period of temporary total disability benefits if the claimant undergoes surgery. However, a specific award of temporary total disability benefits prior to that actual date would at this time be premature.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment; specifically, surgery as recommended by Dr. Chris Arnold. Respondent will also be liable for any temporary total disability benefits which may be associated with that surgery including a controverted attorney fee.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE