

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F300517

LETA B. LUCY, EMPLOYEE	CLAIMANT
FULTON COUNTY HOSPITAL, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA/ CROCKETT ADJUSTMENT, CARRIER/TPA	RESPONDENT

OPINION FILED JANUARY 18, 2006

A hearing in this case was conducted on September 21, 2005, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Mountain Home, Baxter County, Arkansas.

Claimant was represented by Frederick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents were represented by Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A prehearing telephone conference was held on this claim on March 22, 2005; a Prehearing Order was filed on that same date. A copy of the Prehearing Order was admitted into the record as Commission Exhibit #1.

The parties agreed to four stipulations. Two of these stipulations are found in the Prehearing Order and were confirmed by the parties at the hearing; the parties agreed to the other two stipulations at the hearing. The following stipulations are hereby accepted:

1. The employee-employer-carrier relationship existed on January 7, 2003 and at all other relevant times.
2. Claimant sustained a compensable injury to her right knee on January 7, 2003.
3. Claimant's average weekly wage was \$225.78; her temporary total disability rate

is \$151.00.

4. Respondents have controverted all benefits after September 16, 2003.

At the September 21, 2005 hearing, the parties discussed the issues set forth in the Prehearing Order. The parties agreed that the issues to be litigated and resolved are limited to the following:

1. Whether Claimant's requested total knee replacement is reasonably necessary in connection with her compensable injury.

2. Whether Claimant is entitled to additional medical benefits.

3. Whether Claimant is entitled to additional temporary total disability benefits from September 16, 2003 to February 12, 2004.

4. Whether Claimant is entitled to an attorney's fee.

Claimant contends that her compensable right knee injury is at least a factor in her subsequent need for total knee replacement. She seeks medical benefits for this procedure, as well as related additional medical benefits. She also seeks temporary total disability benefits for that period of work missed subsequent to her total knee replacement and an attorney's fee.

Respondents contend that they paid appropriate benefits, both medical and temporary total disability. Respondents further contend that Claimant's need for a total knee replacement is not causally related to her compensable injury, but is due to her pre-existing osteoarthritis.

DISCUSSION

As of the date of the hearing, Claimant was 72 years of age. She worked for the Respondent employer as a cook at the time of her compensable injury. She described how

that injury occurred:

I was -- we had had breakfast served, and they'd brought the trays back. And I was setting the trays up for lunch, and I turned -- I was to get the silverware. And, when I did, my knee popped and I went nearly to the floor then. But the second time it popped, well, I was almost on the floor.

As noted above, the parties stipulated that Claimant sustained a compensable injury to her right knee on January 7, 2003.

After consulting the Respondent employer's doctor, Claimant was referred to Dr. Thomas Knox; she remains under his care. Dr. Knox performed an arthroscopy on February 18, 2003, and then performed a total knee replacement on September 9, 2003. Claimant testified that she "was in constant pain from the time they did the scoping 'til they did the replacement."

ALJ. ... Ms. Lucy, if I understood your testimony correctly, your pain was the same after your knee was scoped as compared to before.

A. Right.

ALJ. There was no change whatsoever?

A. No.

ALJ. And your testimony was that your pain was less after your knee replacement?

A. Right.

She confirmed that her pain "let up" after the total knee replacement, although she still has "a lot of trouble with it." On cross-examination, she confirmed that she was later diagnosed as having osteoarthritis in her right knee.

Claimant testified that, prior to Respondents terminating her benefits, she was not able to work and she could perform very little housework. After her scoping but prior to her total knee replacement, she "maybe washed dishes or something light like that" but could

only do so “about an hour.” She is able to do more now that she’s had her total knee replacement. On cross-examination, Claimant testified that she began receiving social security retirement benefits when she reached 62 years of age and that she continues to receive these benefits. She retired from employment with the Respondent employer on April 4, 2004.

Claimant’s sister, Rhea Ducker, testified on Claimant’s behalf. She confirmed that she was around Claimant “on a regular basis” before and after her injury. Other than complaining of being tired, Ducker did not recall any complaints Claimant had concerning her knee prior to the injury.

Q. Okay. And, as far as her condition is concerned with regard to her knee, was she really improved any after she had the scope of the knee by Dr. Knox in February of ‘03, as compared to the total knee replacement in September of ‘03?

A. Not a whole lot, no, sir.

Q. Okay. And has there been improvement, then, after she had the total knee replacement?

A. Well, she still has a lot of trouble and it still stays swollen all the time.

The medical records do not reveal problems with Claimant’s right knee prior to the date of her compensable injury. A note signed by Dr. Jim Bozeman, dictated October 31, 2001, notes that Claimant’s “bones, joints, and extremities were essentially normal.” This appears to be the last medical record in evidence addressing Claimant’s extremities prior to the date of her compensable injury.

Claimant’s Form N is dated January 7, 2003; it notes a history of “bent to set up tray and twisted knee.” An emergency room form of that same date notes “obvious effusion” in Claimant’s right knee and diagnosed a probable torn lateral meniscus.

Claimant first presented to Dr. Knox on January 13, 2003. A medical history form completed on that date notes a history of arthritis, but does not specify what part of Claimant's body was affected. Upon examining Claimant, Dr. Knox noted "[t]race effusion" and diagnosed a "[p]robable meniscus tear of the right knee." Claimant was taken off work.

Dr. Knox's February 18, 2003 operative note states that an "[a]rthroscopy, arthroscopic partial medial meniscectomy" was performed. Afterwards, Claimant was kept off work and began a program of physical therapy. Follow-up notes for March 27, 2003 and April 28, 2003 note the continuing presence of effusion. The latter note also observes: "Reviewing her operative note, she had Grade II to III chondromalacia of the medial joint and I suspect this is a probable cause for most of her problems." A follow-up note dated May 29, 2003 records Claimant's report of "continued pain in her right knee following her meniscectomy." Dr. Knox then began a program of Supartz injections. Follow-up notes dated June 9, 2003 and June 16, 2003 record Claimant's reports of improvement in her symptoms. After her final injection on June 30, 2003, Claimant noted improvement in her knee pain symptoms and Dr. Knox released her to return to work part-time.

Claimant again presented to Dr. Knox on August 7, 2003. She reported "intractable pain of the right knee, on the medial joint." Upon on examination, Dr. Knox noted "a slight effusion. When she stands, it looks like she is getting a more pronounced varus deformity. She has crepitation." He interpreted x-rays taken that same date as showing "dramatic loss of joint space of the medial joint. I am sure this was a combination of the meniscus tear plus preexisting degenerative change." He recorded an impression of "[o]steoarthritis of right knee, definitely aggravated by the destabilizing injury of her shattered medial meniscus." Dr. Knox raised the possibility of a total knee replacement.

Claimant subsequently reported continued knee pain, such that Dr. Knox opined on August 21, 2003 that Claimant “needs a total knee replacement.” Dr. Knox’s history and physical examination note dictated September 8, 2003 records the following history:

The patient developed knee pain in January of this last year. She was working at Salem Hospital when she twisted her knee and noted the onset of pain in her right knee. Her outpatient exam at that time showed degenerative changes plus a medial meniscus tear and arthroscopy ensued. She has had persistent pain since then. She has had the ____ protocol, supplemental injections and these have not helped. Followup x-rays in my clinic here about a month ago showed progressive narrowing of the medial joint consistent with degenerative arthritis.

His impression was “[a]rthritis, right knee,” and he planned a right total knee arthroplasty.

This procedure occurred on September 9, 2003.

Claimant continued to receive treatment following her operation, including physical therapy. She presented to Dr. Knox on October 2, 2003, for a follow-up visit. He opined:

I do feel this problem of arthritis of her knee is a direct extension of the large meniscus tear which she sustained, which destabilized her knee and turned a very minor degenerative problem of her knee into a major disabling condition.

A note dated November 13, 2003 records an impression of “[k]nee pain,” which Dr. Knox was “sure is related to a little quadriceps dysfunction, considering the longevity of her knee symptoms from her original injury.” A physician’s plan of treatment, spanning the period of September 18, 2003 until November 16, 2003, notes that Claimant’s activity permitted is “[a]s tolerated.”

Claimant returned to Dr. Knox on February 12, 2004. She reported some continued soreness in her right knee as well as some swelling. Upon examination, Dr. Knox reported minimal soft tissue crepitus and the absence of effusion. He opined that Claimant’s operation resulted in “a satisfactory total knee but the patient still has some soreness.” He

declared Claimant at maximum medical improvement and cleared her “for either declaring pension, disability, or returning to work.”

A. Total Knee Replacement

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Constr., Full Workers’ Compensation Commission Opinion filed February 14, 2003 (E906565) (citations omitted). Claimant need not establish that her compensable injury is the major cause for her need for medical treatment; rather, it is sufficient if her compensable injury is a factor in her resulting need for medical treatment. See Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 10-11, 145 S.W.3d 383, ___ (2004); Ballance v. K.C. Contracting, Full Workers’ Compensation Commission Opinion filed August 30, 2004 (F204392).

The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, ___ Ark. App. ___, ___ S.W.3d ___ (March 16, 2005). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, ___ (1947).

I find that Claimant sustained her burden of proving by a preponderance of the

evidence that her total knee replacement is reasonably necessary in connection with her compensable injury. Although some notes following her arthroscopy mention improvement in her condition, other follow-up notes indicate the continuing presence of effusion; Dr. Knox's history and physical examination note dated September 8, 2003 records Claimant's "persistent pain" since the arthroscopy. She testified to improvement in her condition following her total knee replacement. Thus, the total knee replacement was necessary to reduce or alleviate Claimant's symptoms resulting from the compensable injury and to prevent further deterioration of the damage produced by the compensable injury.

Further, Claimant's total knee replacement is connected to her compensable injury. On August 7, 2003, Dr. Knox opined that Claimant's condition "was a combination of the meniscus tear plus preexisting degenerative change." After her total knee replacement, he opined on October 2, 2003: "I do feel this problem of arthritis of her knee is a direct extension of the large meniscus tear which she sustained, which destabilized her knee and turned a very minor degenerative problem of her knee into a major disabling condition." Claimant's compensable right knee injury is thus at least a factor in her need for medical treatment, specifically, the total knee replacement.

B. Additional medical benefits

Applying the law stated above, I further find that Claimant sustained her burden of proving by a preponderance of the evidence that she is entitled to additional medical benefits. The evidence indicates that, in addition to her total knee replacement, she required other care including physical therapy and follow-up visits. She remains under Dr. Knox's care. Claimant's testimony and the medical records demonstrate that this care is necessary to maintain the level of healing she achieved. Further, Claimant's compensable

injury, the damage to her right knee, is at least a factor in her need for this continuing medical treatment. Therefore, Claimant is entitled to additional medical benefits.

C. Temporary Total Disability Benefits

Claimant's compensable right knee injury is a scheduled injury. See Ark. Code Ann. § 11-9-521(a)(3); Taylor v. City of Little Rock, Full Workers' Compensation Commission Opinion filed March 15, 2004 (E914169). An employee who has suffered a scheduled injury is to receive temporary total disability benefits during her healing period or until she returns to work regardless of whether she has demonstrated that she is actually incapacitated from earning wages. Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 152, 41 S.W.3d 822, ___ (2001); see Ark. Code Ann. § 11-9-521(a); Baker v. Quebecor World, Full Workers' Compensation Commission Opinion filed May 4, 2005 (F304342).

The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended.

Wheeler Constr. Co., 73 Ark. App. at 152, 41 S.W.3d at ___ (citations omitted).

I find that Claimant sustained her burden of proving by a preponderance of the evidence that she is entitled to additional temporary total disability benefits from September 16, 2003 to February 12, 2004. Following her September 9, 2003 total knee replacement, Claimant continued under Dr. Knox's care and received additional treatment, including physical therapy. On February 12, 2004, he determined that Claimant had attained maximum medical improvement and that she could return to work, among other options. Thus, Claimant did not work prior to February 12, 2004, and she remained within her healing period until that date. She is therefore entitled to temporary total disability benefits

for her scheduled right knee injury from September 16, 2003 until February 12, 2004.

D. Attorney's Fee

Attorney's fees shall only be allowed on the amount of compensation for indemnity benefits controverted and awarded. Ark. Code Ann. § 11-9-715(a)(2)(B)(ii). The parties stipulated that Respondents controverted all benefits after September 16, 2003; this opinion awards Claimant temporary total disability benefits for her scheduled right knee injury from that date until February 12, 2004. Thus, Claimant is entitled to an award of an attorney's fee pursuant to the statute, to be paid by Respondents.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on January 7, 2003 and at all other relevant times.
3. Claimant sustained a compensable injury to her right knee on January 7, 2003.
4. Claimant's average weekly wage was \$225.78; her temporary total disability rate is \$151.00.
5. Respondents have controverted all benefits after September 16, 2003.
- _____6. Claimant's total right knee replacement is reasonably necessary in connection with her compensable injury. The continuing presence of effusion as well as Claimant's continuing complaints of pain indicate that her February 18, 2003 arthroscopy did not provide relief; Claimant testified to less pain following the total knee replacement. Further, Dr. Knox's August 7, 2003 and October 2, 2003 notes demonstrate that Claimant's compensable right knee injury is at least a factor in her need for the total knee replacement.
7. Claimant sustained her burden of proving by a preponderance of the evidence

that she is entitled to additional medical benefits. Following her total knee replacement, she remained under Dr. Knox's care and received further treatment, including physical therapy. This care and treatment maintained the level of her healing. Certainly, the damage to her right knee is at least a factor in her need for this continuing medical treatment, as evidenced by Dr. Knox's October 2, 2003 note.

8. Claimant is entitled to temporary total disability benefits for her scheduled right knee injury. Claimant continued to receive care and treatment after her September 9, 2003 total knee replacement. She thus remained within her healing period from the date of her surgery until February 12, 2004; she was not released to work until February 12, 2004.

9. Claimant's attorney is entitled to the maximum prescribed attorney's fee under Ark. Code Ann. § 11-9-715.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein.

Claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715 and Death and Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

D. FRANKLIN AREY, III
Administrative Law Judge

DFA/ml