

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411362

LINDA B. REED

CLAIMANT

DILLARD'S, INC.

RESPONDENT EMPLOYER

FIDELITY & GUARANTY INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 25, 2006

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on October 11, 2006. A prehearing conference was held on June 6, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable October 19, 2004, right knee injury.
2. The compensation rates are \$250/188.

The claimant contends that she is entitled to additional medical treatments, specifically the payment of medical bills for treatment she has received, payment for mileage and prescription medicine and for temporary total disability benefits from January 2005, to a date to be determined.

Respondents contend the claimant had a compensable knee injury in October 2004. The claimant underwent knee surgery in October 2004 and was released to return to work in December 2004 and did return to work but left her employment with respondent. Respondents paid for some medical treatment by Dr. Tad Pruitt, but have controverted all other medical.

ISSUES TO BE LITIGATED

1. Medical benefits.
2. Prescription medication and mileage.
3. Temporary total disability benefits.

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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was a compensable October 19, 2004, right knee injury.
2. The compensation rates are \$250/188.
3. The claimant has proven by a preponderance of the credible evidence that additional medical treatment for her right knee was reasonable and necessary and related to her compensable fall on October 19, 2004.
4. Respondents are responsible for payment of all reasonable and necessary

medical care for the right knee that the claimant has pursued, to include two arthroscopic surgeries.

5. Respondents are liable for any related mileage and prescription medication pertaining to the right knee.

6. The claimant has proven by a preponderance of the evidence that she remained in her healing period and did not return to work from March 15, 2006, through April 5, 2006, and again from August 4, 2006, through August 25, 2006.

DISCUSSION

The claimant, 53 years of age, worked for the respondent in sales. Not only did she make sales but she kept the department presentable. On October 19, 2004, she was moving a rack with a co-worker and, as she was walking backwards, she hit some boxes and fell backwards with the rack, hitting her right knee. The claimant sought emergency room treatment immediately and ultimately treated with Dr. James Mulhollan and had surgery on October 29, 2004. The claimant was released to return to work in December 2004, and she decided not to commute the 100 miles to her job and left that job and began working at the Health Department in her hometown. The claimant testified that she only worked about three weeks in that job and left because of a disagreement with her supervisor.

The claimant testified that her knee never straightened out after her surgery with Dr. Mulholland and she continued to be in pain and have swelling even after therapy. The claimant testified that in March, April and May 2005, she called her case worker but never got a return call about seeking more medical attention. The claimant went to mediation and was able to see a doctor on December 7, 2005. A case worker attended

the appointment and according to the claimant, that case worker advised her that she would next be contacted about seeing an orthopedic specialist in her home area. According to the claimant, she did not hear from the case worker and finally the pain caused her to seek treatment with her family doctor in February 2006. Dr. Roger Green, the family doctor, referred her to Dr. Thomas Joseph and she had a MRI and x-rays. The claimant learned that she had a meniscus tear and surgery was performed on March 15, 2006, with physical therapy to follow. The knee was still painful and could not be fully extended. The claimant was next referred to Dr. Brian Dickson and he scheduled another scope on August 4, 2006. According to the claimant, she can now extend her leg and she does not have a lot of pain.

The claimant verified that she has only fallen one time and that was on October 19, 2004. The claimant testified that she last saw Dr. Dickson and was released in late August, 2006. The claimant also verified that none of the doctors indicated that she was unable to work because they knew she was not working at the time.

Ark. Code Ann. §11-9-508(a)(Supp. 2005) provides that 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. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregor Trucking*, ____ Ark. App. ____, S.W.3d ____ (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.*

In the present case, the claimant has proven by a preponderance of the evidence that the additional medical treatment she has received, to include two knee

surgeries, is reasonable and necessary. The claimant credibly testified about the initial compensable injury, the medical treatment that followed with arthroscopy surgery by Dr. Mulhollan and the problems she continued to have thereafter. The main problems the claimant identified were pain and the inability to extend her knee fully. Respondents paid for an independent medical evaluation performed by Dr. Tad Pruitt on December 7, 2005, and it appears he had some new x-rays made but basically diagnosed the claimant with osteoarthritis and possibly psychologic overlay. The claimant was mistakenly under the impression from her case manager that some additional medical treatment was going to be provided to her by respondents following the IME; however, no additional medical benefits have been provided or paid. The claimant sought medical treatment with Dr. Joseph Thomas who ordered a new MRI and discovered a tear of the posterior horn of the medial meniscus and scheduled surgery on March 15, 2006 and repaired the problem. The claimant continued to have swelling and pain and underwent a third procedure by Dr. Brian Dickson on August 4, 2006, for excision of medial plica. Dr. Dickson's August 4, 2006, operative report revealed, in part: "There was a very large area of plica and previous scar tissue from the prior surgeries that was well below the medial femoral condyle causing hyperemia and wear. Shaver was used to remove this area of plica and scar so that there was no further rubbing." This was the latest medical report in evidence. The claimant testified that Dr. Dickson released her in late August 2006 and her knee is much improved and she feels she can return to work.

I found the claimant to be a credible witness who testified under oath that her only fall for this condition was the October 17, 2004, fall while working for the

respondent employer. She testified to continued pain and swelling and inability to straighten her right leg until after the August 4, 2006, procedure and her knee now is much improved. The claimant's diagnostic tests in 2006 revealed a meniscus tear which precipitated the March 16, 2006, surgery and then Dr. Brian Dickson performed another arthroscopy surgery on August 4, 2006, to remove scar tissue and an area of plica. I find the preponderance of the evidence supported the claimant's contentions that her continued need for treatment of her knee was reasonable and necessary and related to her compensable October 17, 2004, injury. Respondents are responsible for all reasonable and necessary medical treatment the claimant has pursued for her right knee, to include the two arthroscopic surgeries. Respondents are also responsible for related mileage and prescription medication.

The claimant next contends that she is entitled to temporary total disability benefits from January 2005, until a date to be determined. The claimant sustained a scheduled injury, right knee. The claimant is, therefore, entitled to temporary total disability compensation while he/she is within his/her healing period and has not returned to work. See, Ark. Code Ann. §11-9-521(a)(Supp. 1999); *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The medical evidence reveals that Dr. Mulhollan released the claimant to return to work in December 2004 and the claimant, in fact, did return to work and worked a few weeks before leaving that job. The claimant left that employment because of the long commute. The next medical report in evidence is a December 7, 2005, independent medical evaluation from Dr. Tad Pruitt and this opined the claimant had no work restrictions. The claimant next had some diagnostic tests, to include a MRI that

suggested a meniscus tear and another arthroscopic surgery was performed on March 15, 2006. The medical records reveal the claimant continued with physical therapy through May 11, 2006. The claimant next saw Dr. Green on June 29, 2006 and saw Dr. Dickson on July 27, 2006, and underwent another arthroscopic surgery on August 4, 2006. With the claimant being unemployed since mid-January 2005, the physicians she has seen have not addressed her ability to return to work, as each medical report has simply discussed her symptoms and their treatment. It would be reasonable that the claimant would at least have some recovery time following her two surgical procedures. The first surgery on October 29, 2004, performed by Dr. Mulholland, provided for recovery and an end of the healing period on December 15, 2004. This allowed a six-week recovery time. The last surgery was August 4, 2006 and the claimant testified that she was released about August 22, 23 or 24, 2006. This allowed a three-week recovery period. The second surgery occurred on March 15, 2006, and, although the doctor did not specify a recovery period, the claimant did continue with physical therapy until May 11, 2006. After considering the recovery period for the two other similar surgeries, the claimant at least would have a three-week recovery period. After considering all the credible evidence, to include the claimant's testimony and the medical evidence, I find the claimant did remain in her healing period and did not return to work from March 15, 2006 through at least April 5, 2006 and again from August 4, 2006 through August 25, 2006.

ORDER

The claimant has proven by a preponderance of the credible evidence that additional medical treatment for her right knee was reasonable and necessary and

related to her compensable fall on October 19, 2004. Respondents are responsible for payment of all reasonable and necessary medical care for the right knee that the claimant has pursued, to include two arthroscopic surgeries. Respondents are also liable for any related mileage and prescription medication. The claimant has also proven by a preponderance of the evidence that she remained in her healing period and did not return to work from March 15, 2006 through April 5, 2006 and again from August 4, 2006 through August 25, 2006.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**