

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E806095

STEVE SHERMAN

CLAIMANT

LENNOX INTERNATIONAL, INC.

RESPONDENT EMPLOYER

PACIFIC EMPLOYERS INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED JUNE 9, 2006

Opinion by Administrative Law JUDGE LINDA K. MARSHALL.

Claimant appeared PRO SE.

Respondents represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on April 14, 2006, before Administrative Law Judge Cynthia Estes Rogers in Pine Bluff, Arkansas. Since Judge Rogers is no longer a Commission employee, the case was reassigned for an opinion to be written on the record without objection from the parties.

A prehearing conference was held on March 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. A compensable left knee injury occurred on April 29, 1998.
2. Compensation rates are \$359/269.
3. Forty-nine weeks of temporary total disability were paid.

4. Permanent partial disability benefits for a 50% impairment rating to the lower left extremity were paid.

5. Some medical bills were paid but were ceased in January of 2003.

The claimant contends he is entitled to additional medical benefits, both past and future, since January 2003, to include knee replacement surgery.

Respondents contend that knee replacement surgery has not been recommended by his treating physician and that claimant is not entitled to any additional medical benefits. Respondents contend the claimant has been provided all appropriate benefits to which he is entitled. Respondents assert that claimant's request for additional medical treatment is not reasonably necessary nor causally related to the work-related injury of April 29, 1998.

ISSUES TO BE LITIGATED

1. Additional medical benefits.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, to include testimony, 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. A compensable left knee injury occurred on April 29, 1998.
2. Compensation rates are \$359/269.
3. Forty-nine weeks of temporary total disability were paid.

4. Permanent partial disability benefits for a 50% impairment rating to the lower left extremity were paid.

5. Some medical bills were paid but were ceased in January of 2003.

6. The claimant has proven by a preponderance of the evidence that the additional medical treatment he has pursued since January 2003, is reasonable and necessary and related to the compensable April 29, 1998, injury.

7. Respondents remain liable for the reasonable and necessary medical treatment for the claimant's left knee.

8. The claimant has failed to prove by a preponderance of the evidence that a knee replacement has been recommended at this time and has failed to prove that such is reasonable and necessary and related to his compensable injury.

DISCUSSION

The claimant, 47 years of age, sustained a compensable left knee injury on April 29, 1998, and all appropriate benefits were paid by respondents through January 2003. The claimant testified that he did not have arthritis before his work injury and his medical records document that. The claimant testified that he continues follow-up care for his knee, which includes injections and pain medication. According to the claimant, knee replacement surgery is inevitable, although Dr. Herbert Hahn has not specifically indicated the exact time frame. The claimant testified that he returns to Dr. Hahn for knee injections when the pain medications stop helping. The claimant has continued to see Dr. Hahn for his knee but respondents stopped medical benefits in January 2003.

The claimant testified on cross examination that he had previously hurt his right knee in high school but had never had any problems with his left knee until the April

1998, injury. The claimant continues to work full time for the respondent employer since his release to return to work. The claimant still plays golf, but not as much as he previously played. The claimant verified that since his work injury, he has slipped on ice or water on a couple of occasions and was “knocked for a loop” when a forklift ran into pallets by his truck. (T., p. 14, line 10.) The claimant works as a brazer for the respondent employer currently.

Cathie Ammons, senior claims representative for the insurance company but now retired as of May 31, 2002, testified that she was involved in the claimant’s claim for benefits. Ms. Ammons testified that she was not aware of any reports from the claimant’s treating physician recommending knee replacement surgery. Ms. Ammons testified that she did not recall making any assertions to the claimant that future surgery would be paid by respondents.

Don Bonnett, director of human resources for the respondent employer, testified the claimant works currently in a welding position in the braze cell on first shift. Mr. Bonnett testified that he was not aware of any complaints or problems the claimant reported to the first aid department and he further testified that in 2005 he saw the claimant frequently on the golf course but using a golf cart.

The claimant contends that he is entitled to additional medical benefits. Ark. Code Ann. §11-9-508(a) (Repl. 2002) requires employers to provide such medical services as are reasonably necessary in connection with the injury received by the employee. The injured employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of a compensable injury. Ark. Code Ann. §11-9-705(a)(3) (Repl. 2002); *Jordan v. Tyson*

Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonable and necessary treatment under §11-9-508(a) is a fact question for the Commission. *General Elec. Railcar Repair Servs. v. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998). The Commission has the authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The claimant has proven by a preponderance of the evidence that some additional medical treatment he has pursued for his left knee is reasonable and necessary and related to his compensable injury. The claimant has failed to prove that a knee replacement has been recommended and that the procedure is reasonable and necessary at this time. The medical evidence indicates the claimant has continued to see Dr. Herbert Hahn for follow-up care associated with his left knee. A note from the physician from the September 15, 2003, examination reflects:

Diagnosis/Treatment Rendered
DX: Osteoarthritis Lt. Knee
Left Knee Synvisc injection was not approved by W/C. I do not understand this – This is part of his compensable injury

process.

Prognosis/Expected Duration of Treatment
RX - Vioxx 25 mg. Return in 2 mos.

(Resp. Exh. No. 1, p. 151.)

The claimant followed up again on December 29, 2003, with Dr. Hahn for knee pain and received medication; followed up again on March 1, 2004; consulted the doctor again on May 3, 2004; consulted the doctor again on July 19, 2004; another follow-up consult on September 13, 2004; another consult on March 7, 2005; another consult on April 11, 2005; another consult on May 9, 2005; again on June 13, 2005; again on September 8, 2005; again on November 14, 2005; again on February 6, 2006; and again on March 6, 2006. The claimant has been diagnosed with osteoarthritis of the left knee. This diagnosis appears to be consistent with Dr. Hahn's opinion on May 13, 2002, when he assigned the 50% permanent impairment rating to the claimant's left knee. On that date, Dr. Hahn opined that the claimant's "left knee will deteriorate at an unpredictable rate." Resp. Exh. No. 1, p. 143. While follow-up visits with Dr. Hahn after January 2003, sometimes included problems with the claimant's shoulder and elbow, each of the visits identified above included follow-up care for the claimant's left knee pain and problems following the claimant's compensable April 29, 1998, injury. I found the claimant's testimony compelling that he did not have previous problems with his left knee before the April 29, 1998, injury, although he had right knee problems previously, as well as Dr. Hahn's September 15, 2003, note indicating that he is surprised the insurance company has denied the Synvisc injections he recommended, since these are needed following the compensable injury. I was persuaded the claimant's

testimony about continued problems with his knee was genuine and were related to his compensable injury and find the medical records document the claimant's follow-up care for his knee problems. There was testimony and some notations in the medical records that the claimant played golf and some soft ball, but I did not find in the evidence that the claimant was advised by his treating physician to discontinue these activities. I find respondents are responsible for the reasonable and necessary medical care the claimant has pursued for his left knee since January 2003. I find the claimant has failed to prove by a preponderance of the evidence that knee replacement surgery has been recommended and is reasonable and necessary and related to the compensable injury at this time.

ORDER

The claimant has proven by a preponderance of the evidence that the additional medical treatment he has pursued since January 2003, is reasonable and necessary and related to the compensable April 29, 1998, injury. Respondents remain liable for the reasonable and necessary medical treatment for the claimant's left knee. The claimant has failed to prove by a preponderance of the evidence that knee replacement has been recommended at this time and that such is reasonable and necessary and related to his compensable injury.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**