

**BEFORE THE ARKANSAS WORKERS' COMPENSATION
COMMISSION**

CLAIM NO. F409389

JEANETTE TABB, EMPLOYEE

CLAIMANT

**EAST ARKANSAS AREA AGENCY ON AGING,
EMPLOYER**

RESPONDENT

**AGING SERVICES FUND/
RISK MANAGEMENT RESOURCES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED JANUARY 5, 2006

Hearing before Administrative Law Judge Cynthia Estes Rogers on October 7, 2005, in Helena, Phillips County, Arkansas.

Claimant represented by Mr. Mike J. Etoch, Jr., Attorney at Law, Helena, Arkansas.

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

A hearing was held on October 7, 2005, to determine claimant's entitlement to additional medical benefits, specifically rehabilitation ordered by Dr. Guy L'Heureux, as well as additional temporary total disability indemnity benefits from February 17, 2005, and continuing through a date yet to be determined, and attorney's fees.

The parties stipulated to the existence of the employee-employer relationship on August 20, 2004, when claimant sustained a compensable left knee injury, for which some medical benefits were paid, as well as temporary total disability benefits

from the date of injury through February 7, 2005. It was further stipulated that the claimant's earnings were sufficient to entitle her to weekly indemnity benefits of \$207.00 for temporary total disability, based on an average weekly wage of \$310.36.

Claimant contends that she was injured on August 20, 2004, while performing her duties as an independent living assistant for respondent-employer at a patient's home. She contends she received temporary total disability (TTD) indemnity benefits from the date of injury through February 7, 2005. She contends that she returned to work on February 7, 2005, and worked until February 16, 2005, when she contends she had to resign her job because there was no light duty available and because her doctor took her off work again on February 17, 2005.

Claimant contends that a permanent disability rating has not been assessed at this time and, therefore, requests that the issue of permanency be held in abeyance. She seeks additional medical treatment, specifically rehabilitation ordered by Dr. L'Heureux, and additional TTD benefits from February 17, 2005, through a date yet to be determined, as well as attorney's fees.

Respondents admit that they accepted claimant's left knee injury as compensable; however, they contend that the claimant has been provided all appropriate benefits to which she is entitled. Respondents contend that claimant was released to return to work on February 4, 2005, by Dr. Apurva Dalal, and that they paid her TTD benefits through February 7, 2005. Respondents contend that they

made light duty work available for her and that she returned to work for a couple of weeks before resigning her employment. Respondents contend that, even though claimant resigned her employment, they continued to make work available for her. Respondents further contend that part of the reason claimant did not continue working for respondent-employer was because of an unrelated back condition. As such, it is respondents' contention that claimant would not be entitled to any additional TTD benefits.

With regard to the claim for additional medical treatment, it is respondents' contention that claimant had received appropriate treatment, including evaluation by Dr. Dalal, who had treated her following her surgery and that he indicated there was nothing further that could be provided to her. Respondents assert that they did pay for Dr. L'Heureux's initial visit, as required, after claimant was granted a one-time change of physician by the Commission. However, respondents contend that additional treatment from Dr. L'Heureux, as well as the physical therapy that he had recommended, is not reasonable and necessary nor is it causally related, since claimant had already undergone that type of treatment in the past and had indicated no benefit from it.

STATEMENT OF THE CASE

Claimant is fifty-three years old and testified that she had worked for respondent-employer for approximately eighteen and one-half years in various jobs,

including home health care. Claimant contends that on August 20, 2004, while performing her duties as an independent living assistant for respondent-employer at a patient's home, she tripped off a step while going out to her car to get something for the patient and twisted her left knee, causing injury to it.

The respondents accepted claimant's injury as compensable and paid medical benefits and TTD benefits until February 7, 2005, after claimant was released to return to light duty work by Dr. Dalal on February 3, 2005. According to medical records, claimant first saw Dr. Marion McDaniel on August 23, 2004, who then referred her to Dr. Apurva Dalal, an orthopaedist. Dr. Dalal began treating claimant on September 21, 2004, and performed meniscus arthroscopy on November 12, 2004. Claimant followed up with physical therapy.

Claimant was released by Dr. Dalal to return to light duty work on February 3, 2005, although all parties stipulate that claimant was paid TTD benefits through February 7, 2005. Dr. Dalal's notes of February 3, 2005 state as follows:

I had a long discussion with Jeanette today. I have explained to her that she has some element of patellar tendonitis, which *only with time may resolve*. The only thing one can do is to take antiinflammatory medications for that. *At present there is nothing else for me to do*. I will see her back on p.r.n. basis only. We also talked about the patient's job. I have explained to her that since there is nothing else I can do *she may return back to light duty*; however, the patient has informed me that *because of her knee trouble and because of the back she wants to file the social security disability*.

[Emphasis added.]

Claimant testified that she worked light duty for only about two weeks but was not really able to work. She resigned her employment on February 16, 2005, and went to her family physician, Dr. Webber, who referred her to Helena Physical Therapy Department; however, workers' compensation would not approve that physical therapy, so she returned to Dr. Dalal on February 17, 2005.

Dr. Dalal referred her for physical therapy three times a week for three weeks and, according to medical records, took her to off-work status again from that date, February 17, 2005, "until further notice." He also noted that if she continues to have pain, "[W]e will talk to the Workers' Compensation Company and make an arrangement to get a second opinion from Dr. Riley Jones from Memphis orthopedic group." That second opinion was never arranged.

Records reflect that claimant did attend physical therapy for a while and then petitioned the Commission for a change of physician. On April 20, 2005, claimant was granted a one-time change of physician to Dr. Guy L'Heureux. According to medical records, Dr. L'Heureux first saw claimant on June 14, 2005. According to Dr. L'Heureux's notes, he reviewed all of claimant's records from Dr. Dalal, as well as the MRI performed on October 6, 2004, the operative notes of November 12, 2004, and an x-ray of the left knee done on September 23, 2004.

Dr. L'Heureux's notes of June 14, 2005, state as follows:

DIAGNOSIS: Osteochondritis of the left knee *associated to a meniscal tear of the left knee, which has been treated arthroscopically.*

Quite evidently, the meniscectomy may have been a success, but the patient has been left with the *sequela of the osteochondritis. I wonder why she has had no treatment of this condition between February and now.* The patient has had some physical therapy and she says she has done those exercises at home, but when I ask her to do an isometric exercise that she says she has been shown in therapy she is unable to do it correctly. So, I doubt she has been doing the exercise program on her home (sic).

I explained the problem, that *she has two different pathologies. One is the result of the accident and the second one being degenerative arthritis or osteochondritis and that was present before the injury.* It appears that the meniscectomy has been successful, but now I will try to treat the osteochondritis in order to get her back to where she can return to work. *I suggest to her steroid injection in her knee and anti-inflammatory medication such as Motrin that she has at home and definitely physical therapy.*

[Emphasis added.]

Dr. L'Heureux's notes indicate that he did give claimant an injection in her knee at that initial visit. The parties have stipulated that respondents paid for the initial visit to Dr. L'Heureux, but they have controverted any further treatment by him or any treatment recommended by him, including physical therapy.

Medical records introduced as exhibits at the hearing indicate that claimant was seen again by Dr. L'Heureux on June 29, 2005, and August 1, 2005. Following the

hearing in this matter, claimant submitted a medical record received by claimant's attorney on October 12, 2005, from a September 2, 2005, office visit with Dr. L'Heureux, which will also be made a part of the record in this case with no objection having been received from respondents. Those records state, in part, as follows:

June 29, 2005

She is back today saying that the injection didn't help her very much and that she is *still having pain and limp of the left lower extremity.*

The patient still has some synovitis of her left knee. She has still some difficulty getting in full extension with her knee and a flexion at about 90 to 95 degrees.

I discussed with her the fact that it will take time for strengthening of the muscles and that the medication is still at work. *I will send her back to physical therapy twice a week for the next 3 weeks at CMH and she will continue her exercise program at home. She will stay off work during that period of time and I will see her in about a month to re-evaluate her condition and her work status.*

[Emphasis added.]

_____ August 1, 2005

Ms. Tabb was first seen June 14, 2005. . . . [W]hen she came back on June 29, has not felt much improvement. . . . *It was my opinion that she was unable to return to work at that time.*

_____ *It appears that my statement has been misinterpreted or that I wrote it in an unclear way. It is evident that there are 2 diagnoses and it is also evident that this patient didn't have any problem with her osteochondritis until*

the accident. Therefore, the accident caused the meniscal tear, which was treated successfully, but also triggered aggravation of a pre-existing asymptomatic condition. The meniscal tear was treated successfully, but in my opinion the post-traumatic synovitis triggered by the injury was not treated and it is my opinion that this should be covered by workers' comp. The patient is unable to return to the normal work that she used to do and had financial problems since she was released by Dr. Dalal and was not receiving any compensation.

[Emphasis added.]

September 2, 2005

She is presently on her own and has had no physical therapy and *her knee is not any better.* The patient says that she is doing her exercise program. She is using heat. She has tried to walk, but then she developed *pain on the distal aspect of the patella and is not able to walk very long.* She says she was not able to take the Motrin because of GI upset. She is taking some Darvocet that helps her pain to a certain extent.

Extension is limited by about 10 degrees, flexion by about 90 degrees. *It is quite evident that her synovitis is important enough to keep her from doing her work.*

At this point I recommend Aleve to try. Isometric exercises continue. Heat to continue. Walking short distances and using an Exercycle if possible or a bicycle. I will be glad to re-evaluate her if there is any other problem.

[Emphasis added.]

Claimant testified that when her treatment by Dr. L'Heureux was denied by respondents after her initial visit with him, she did not go to physical therapy because

it was not then approved and she could not afford it. Claimant testified that although she filed for Social Security disability in November of 2004, which was denied and is now on appeal, she would like to be able to return to work and would prefer to work over being on disability. She testified that she does not feel like working but that she would “try” to go back to work.

Claimant admitted during cross-examination that she has had back problems before this knee injury and testified that it was a combination of her knee and back problems that caused her to file for Social Security disability. Claimant further admitted that the resignation she gave to respondent-employer stated, “I’m resigning because of my knee and my back pain.”

Claimant testified that she is able to drive with her knee problem, although not very far. She testified that she is able to do “some” of her household chores and “some” of her shopping and is able to “sometimes” keep up with her hobbies of singing in the choir at church and visiting with friends and relatives. She admitted that Dr. Dalal indicated in February of 2005 that there was nothing else he could do for her. However, claimant testified, and medical records reflect, that Dr. Dalal took claimant off work again on February 17, 2005, and that she has never been released to return to work. She testified that she has not worked since that date. Claimant testified that seeing Dr. L’Heureux did help her some and that she is not completely well at this time.

FINDINGS OF FACT

1. The stipulations agreed to herein by the parties are accepted as fact;
2. Claimant is entitled to additional temporary total disability indemnity benefits from February 17, 2005, and continuing through a date yet to be determined;
3. Claimant has proven by a preponderance of the evidence that additional medical treatment by Dr. L'Heureux, including rehabilitation recommended by him, is reasonable and necessary and is causally related to her left knee injury of August 20, 2004;
4. Respondents have controverted claimant's entitlement to any additional benefits;
5. The issue of permanency is held in abeyance.

DISCUSSION

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages; the healing period is that period for healing of an accidental injury that continues until the employee is as far restored as the permanent character of his injury will permit, and that ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Carroll Gen. Hosp. v. Green*, 54 Ark. App. 102, 923 S.W.2d 878

(1996). The Court of Appeals has held that the determination of when the healing period has ended is a factual determination for the Commission and will be affirmed on appeal if supported by substantial evidence. *Id.* These are matters of weight and credibility, and thus lie within the exclusive province of the Commission. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002).

In this case, claimant asserts that she is entitled to an additional period of temporary total disability benefits beginning February 17, 2005, and continuing through a date yet to be determined. The evidence clearly establishes that claimant was released to return to light duty work by Dr. Dalal on February 3, 2005, at which time Dr. Dalal stated that there was nothing more he could do for her. However, he noted that she was to return to see him on an as-needed basis, and she did return on February 17, 2005, at which time he clearly took her back to an off-work status “until further notice.”

Claimant then petitioned the Commission for a change of physician, which was granted. She then began seeing Dr. L’Heureux, who has kept claimant off work. There is, in fact, no release to return to work found in the evidence submitted before this examiner, and claimant testified that she has not returned to work since Dr. Dalal took her off work again on February 17, 2005. As such, it is this examiner’s opinion that claimant has proven entitlement to additional temporary total disability benefits commencing February 17, 2005, and continuing to a date yet to be determined.

With regard to claimant's assertion that she is entitled to additional medical treatment by Dr. L'Heureux, including his recommendation for rehabilitation therapy, the Arkansas Court of Appeals has held that medical treatment intended to reduce pain or enable an injured worker to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. *See generally, Georgia-Pacific Corp. v. Dickens*, 58 Ark. App. 266, 950 S.W.2d 463 (1997); *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983); *Tiner v. Total Petroleum*, Full Workers' Compensation Commission, Opinion filed April 3, 2003 (W.C.C. F104990). In addition, an employer may 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). ("Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.") However, a claimant must still prove that the additional treatment he or she desires is reasonable and necessary, in relation to his or her compensable injury.

In this case, it is clear from the medical records, as well as her own credible testimony, that claimant continued to suffer pain after Dr. Dalal had released her on February 3, 2005. Obviously, since she returned to Dr. Dalal on February 17, 2005, and he took her off work again "until further notice," she was still experiencing problems with her knee. It is also evident from the medical records that, while

claimant was seeing Dr. L'Heureux, she was still experiencing pain and problems with her left knee. While she admitted that part of the reason she resigned her employment and filed for Social Security disability was due to an unrelated back condition, the medical records from Dr. L'Heureux indicate that claimant was continuing to have problems with her knee that, in his opinion, were a direct result of her work-injury of August 20, 2004. He further opined that he wondered why she had not received treatment between February of 2005, when she was taken off work again by Dr. Dalal, and his initial treatment of her beginning in June of 2005. In addition, Dr. L'Heureux kept claimant off work as a result of her knee problem.

In this examiner's opinion, based upon the evidence submitted in this case, claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment by Dr. L'Heureux, including his recommendation of rehabilitation, and that his treatment is reasonable and necessary and is causally related to her work injury of August 20, 2004.

AWARD

Respondents are directed to pay claimant benefits in accordance with the findings of fact above.

Respondents are directed to pay claimant additional temporary total disability indemnity benefits commencing February 17, 2005, and continuing until a date yet to be determined.

Respondents are directed to pay additional medical treatment, both past and future, received by claimant from Dr. L'Heureux, including his recommendation of rehabilitation, for her work-related knee injury sustained on August 20, 2004.

Respondents are directed to pay the claimant's attorney, Mr. Mike J. Etoch, Jr., the maximum attorney's fee on this award pursuant to Ark. Code Ann. § 11-9-715.

IT IS SO ORDERED.

CYNTHIA ESTES ROGERS
Administrative Law Judge