

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602867

CANDY WYSS, EMPLOYEE	CLAIMANT
EVERGREEN HEALTH CARE, SELF-INSURED EMPLOYER	RESPONDENT
CANNON COCHRAN MGMT., TPA	RESPONDENT

OPINION FILED OCTOBER 23, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on August 4, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE MEGAN HENRY and the HONORABLE TROY HENRY, Attorneys at Law, Jonesboro, Arkansas.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers' compensation benefits.

On June 13, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to same. The issue of permanent impairment was withdrawn from consideration at this time. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Candy Wyss, the claimant, and Heather Burchard, coupled with medical reports and other documents comprise the record in this claim.

DISCUSSION

Candy Wyss, the claimant with a date of birth of April 15, 1973, has been a resident of Rector, Arkansas for six (6) years. Claimant commenced her employment with respondent in September 2005, as a Certified Nursing Assistant.

In describing her job duties in the employment of respondent claimant noted that the same entailed assisting the residents with daily living, as well as helping with bathing and feeding of residents and other needs. Claimant worked full time for respondent from September 2005, until the January 2006, incident which serves as the basis of her workers' compensation claim.

Ind describing the January 25, 2006, work-related incident, claimant's testimony reflects:

I was helping assist in bathing a resident in the shower room. And the floor was slick. It was wet. When she kicked out, she kicked in the side corner of my leg, which I'm trying to move from her as it happened. And I went to both knees. (T. 27).

The resident was sitting on a shower chair at the time she kicked the claimant. Claimant observed that the resident, who was ninety-five (95) years old, had a history of being extremely combative. Although she fell on both knees, claimant noted that when she attempted to get up off the floor it was her right leg that was hurting. Claimant candidly acknowledge that she did not remember hearing any sound as her knees impacted the floor, just the sensation of falling and being stunned when she fell.

The testimony of the claimant reflects that the sensation of pain in her right knee was as if

somebody was jabbing something inside of it, which was very painful. Assistance was rendered to the claimant by her co-worker, Heather Burchard. The charge nurse, Tara Nichols, while the claimant was still on the floor of the shower. Thereafter claimant was assisted off of the floor by Ms. Burhard to the administrator's office, a distance of 50 feet.

Upon arriving at the office of the administrator claimant's testimony reflects:

We sat there and the administrator asked what happened. We told her. She had to fill out a report. And she was getting a hold of my husband. And she also called the Rector Clinic, Family Care Clinic in Rector. They said they wouldn't be able to see me and do x-rays until - - this happened at like eleven something in the morning and they said they couldn't get to me until like 3:00 that afternoon. She said that we couldn't wait that long and I needed to get it seen now. So she called my husband and had him take me to Piggott. (T. 30-31).

Claimant was seen at the emergency room of the Piggott Community Hospital on January 25, 2006, for medical treatment relative to her right knee injury. The testimony of the claimant reflects that the emergency room physician examined her knee, obtained x-rays, placed her a 16 inch knee immobilizer on the right knee, provided a prescription for crutches, and recommended an MRI scan of the knee, which was also scheduled. Claimant was also provided pain medication while she was in the emergency room. The testimony of the claimant reflects that the attending emergency room physician furnished her an anti-inflammatory, 800 milligrams of ibuprofen to address the swelling. Claimant was also provided a prescription for Darvocet and directed not to operated a vehicle while taking the medication.

The MRI scan was scheduled for the following day in Paragould. Piggott is approximately 15 miles north of Rector and Paragould is approximately 20 miles south of Rector. Claimant had the prescription for the crutches filled at the pharmacy in Rector. Claimant was

also provided an off work slip by the attending emergency room physician at the time of the ER visit on January 25, 2006. Claimant was directed to remain off work until February 1, 2006. The emergency room physician, Dr. Larry Lawrence, referred the claimant to Dr. Schechter, an orthopedic physician, relative to the right knee injury. Claimant was notified of the scheduled appointment before leaving the emergency room.

Regarding the condition of her right knee upon arriving home from the emergency room on January 25, 2006, the testimony of the claimant reflects:

I wasn't feeling a whole lot of it then. I mean he had given me pain medication and I slept most of the afternoon. (T. 34).

The following day claimant noted that right knee was "a little red and swollen" around the front. Claimant underwent the MRI scan of her right knee pursuant to the directions of the emergency room physician the following morning at Arkansas Methodist Hospital in Paragould. Claimant learned of the results of the MRI scan from Dr. Lochner at the Family Care Clinic in Rector the day following the study.

The testimony of the claimant reflects that respondent utilized the Family Care Clinic in Rector as its designated medical provider for injured employees. Claimant was provided an off-work slip by Dr. Lochner directing her to remain off work until she was seen by Dr. Schechter relative to her right knee injury.

The testimony of the claimant reflects that she was first seen by Dr. Schechter, a Paragould orthopedic physician, on January 31, 2006. Claimant was still using crutches at the time of her initial visit to Dr. Schechter. Regarding her ability to walk on her right leg without crutches at the time of the visit to Dr. Schechter, claimant testified:

Somewhat. I didn't - - it hurt. I explained to him that it was still bothering me, that it hurt to walk without them. He advised me to take the brace off and try to wean off the crutches. In fact, he told me to use just the one on the right to take weight off that side. (T. 37).

Claimant was placed on light duty by Dr. Schechter, which entailed sitting-down duty only. On February 9, 2006, claimant had a follow-up visit with Dr. Schechter. Claimant explained that during the period between the two visits she would have periods where her knee would feel better and then it would flare back up. During the February 9, 2006, visit to Dr. Schechter claimant was prescribed physical therapy for the knee, three days per week for 2-3 week, at the physical therapy department in the Paragould hospital. Prior to the afore, claimant had been doing some therapy at home on the knee pursuant to the directions of Dr. Schechter.

The testimony of the claimant reflects regarding the physical therapy:

I would go in, and they would do some massage and then we would do some exercises. And then they would put some kind of electronic thing on there that was shooting medicine into my knee cap. (T. 38).

Claimant also received moist heat to the knee during the physical therapy. Claimant testified that she was being treated for fluid under the knee. Claimant was on light duty during her physical therapy treatment.

The testimony of the claimant reflects that she returned to the emergency room of the Piggott Community Hospital for medical treatment due to swelling in the right knee. Claimant explained:

Yes, sir. My knee swelled considerably again on - - during the night. And the next day I went back to the, I called Dr. Schechter's office. And they told me I didn't have an appointment for so long. And I went to the emergency room. And - - (T. 40).

The above emergency room visit occurred on February 27, 2006. Medical treatment rendered by the emergency room physician included draining 5 cc's of fluid off of the right knee. Claimant was also provided a prescription for Darvocet by the emergency room physician, as well as an off-work slip until she could be seen by Dr. Schechter.

The claimant was seen by Dr. Schechter on March 2, 2006, pursuant to the direction of the emergency room physician. Dr. Schechter recommended arthroscopic surgery during the March 2, 2006, visit and provided the claimant an off-work slip pending same. The testimony of the claimant reflects that after the surgery was approved by respondent, the surgery was scheduled and performed on April 5, 2006. The surgery was performed at the hospital in Paragould. Claimant's testimony reflects her understanding of the surgery:

It was my understanding that I had - - that he went in and he looked to make sure that nothing was ripped or torn and he shaved some down - - I don't know what all, I mean I don't use big terms and stuff. But he said he shaved some stuff out from in there. (T. 42-43).

Following the arthroscopic surgery claimant returned to see Dr. Schechter on April 13, 2006, and was released to return to light duty effective April 17, 2006.

On April 17, 2006, claimant returned to work for respondent performing light duty, which consisted of taking vital signs, files, and charts. Claimant performed light duty for approximately three weeks before being returned to full duty on the floor. In comparing the status of her right knee following the April 5, 2006, surgery, claimant's testimony reflects:

It felt somewhat better. I still had bouts with it still feeling like I had sharp, something sharp sticking in it. It still grinds when I move it. (T. 44).

Claimant testified that before the surgery she could hear the grinding in the right knee, however

since the surgery she cannot. Regarding the presence of the grinding since the surgery claimant explained:

Just pushing, placing your hand on it when it hurts, you know I automatically cup it. It, you can just feel it.

* * *

It just, it - - I don't know how to explain it. I don't know if I can explain it. It's just, it's something - - you can feel it. It's something rubbing. (T. 44).

Claimant denies having any grinding sensation or swelling in her right knee prior to the January 25, 2006, accident. Claimant noted that since the surgery occasionally there will be swelling in the right knee. Claimant explained:

I work in a nursing home. I'm used of lifting two to 300 pound people. And after a rough day at work, yes, it will swell a little bit more. Some of these people are full bodied and you completely have to lift them. Some of them, it takes two of us to pick them up, position them. (T. 45).

The testimony of the claimant reflects that she has not been reimbursed by respondent for milage to the various medical provider relative to her January 25, 2006, accident. Claimant has not received any indemnity benefits from respondent relative to the time she was completely off work relative to her right knee.

On cross examination claimant explained that she felt that the area of injury was underneath and around the right knee cap following the accident. Claimant acknowledge that the x-rays that were obtained at the emergency room following the accident were normal. Claimant acknowledged a difference of opinion between Dr. Schechter and the radiologist regrading the results of the MRI scan of her right knee. With respect to the symptoms that she was experiencing in the right knee prior to her April 5, 2006, surgery, claimant testified:

I was still having pain in my knee. It still felt the same way when it was, when I'd go to bend it. It was still having pain in it. There had to be some reason I was having pain in this knee. (T. 49).

Claimant testified that since the surgery, she still has pain in the right knee, however not as frequent, and she still feels the grinding. Claimant's testimony reflects that there is swelling in the right knee following work once she gets home, however there is none in the left knee.

Claimant has not returned to Dr. Schechter since being released to light duty following the surgery.

Claimant was off work from March 2, 2006, pursuant to the directions of Dr. Schechter awaiting respondent's authorization/approval of the recommended right knee arthroscopic surgery. The afore was not obtained and scheduled until April 5, 2006. During the period that Dr. Schechter was awaiting authorization for the surgery from respondent claimant was off work. Claimant explained why she was not permitted to do light duty by respondent during the afore period:

Yes. I had to have a note stating that I could either be on light duty; I had to be completely off work, or I had to have a note telling me I could resume to work before they would let me come back to work. (T. 51).

Regarding the current status of her right knee and need for additional medical treatment, the testimony of the claimant reflects:

I still think there's something wrong. I don't know what it is. But I mean - - I don't know. (T. 52).

While the claimant has not attempted to schedule an appointment with Dr. Schechter since April 13, 2006, when she was released to light duty, she testified that she still feels that she need further medical treatment relative to the right knee. The testimony of the claimant further reflects

regarding the benefits of the April 5, 2006, surgery:

Yes, sir. It [right knee pain] decreased some before the surgery. And I discussed that with Dr. Schechter and there was days that it felt okay. And then other days that is just felt like heck. I mean it was just horrible. (T. 56).

The testimony of the claimant reflects that after Dr. Schechter told her to wean off the crutches and walk, there were times when she would walk across the floor and the right knee would give way resulting in her falling. In describing the afore sensation, claimant testified:

It just, I didn't feel like there was anything there. It was just - - (T. 55).

Claimant noted that since the April 5, 2006, surgery by Dr. Schechter, she has suffered similar falling incidents, perhaps once every two to three weeks.

The testimony of Ms. Heather Burchard reflects that she is employed as a certified nursing assistant at Evergreen Healthcare, Rector Nursing Home, and has been so employed since the end of September 2005. Ms. Burchard testified that she and the claimant started work for respondent at the same time. At the time the claimant was a certified nursing technician. Ms. Burchard, who was working on January 25, 2006, testified regarding the incident involving the claimant's accident:

We [me and Candy] were in the shower room at the nursing home bathing a resident.

And the resident was being very combative, kicking, screaming, cussing, ranting, and raving.

And in between arms kicking and hitting that the resident was doing to Candy and I, between each one, we were going in there and lots of soap and trying to wash here from head to toe. And I remember the resident kicking right when Candy had stepped in there to wash her because I had stepped back. She was kicking. And she kicked Candy.

And Candy fell to her knee.

Yes. In the shower. Yes. And Candy fell and hit her knee. I heard her holler, ow. And she hit the concrete floor. I heard a noise like a crrrk (phonetic) noise.

Okay. It just sounded like a crrrk (phonetic) noise. I mean when she hit that floor on her knee. And I helped Candy get off of her knees you know after she hit the floor and sat on her bottom. She could not straighten her leg out. It hurt her. And - - (T. 11-12).

Ms. Burchard explained that the resident was sitting in a shower chair at the time the claimant was kicked on her right leg/knee. Regarding the mechanics of the accident/injury, Ms.

Burchard testified:

Yes. She [the resident] was sitting in a shower chair, just a regular shower. We've got the same type of this chair and she sat on her bottom. She would hold her hands on the, we had rails on the shower chairs that the chair sat in. And she would, when she went to kick her feet, she put her hands on the chair and kicked. And then when she would put her feet down, she would hit, you know, back and forth. (T. 12-13).

Ms. Burchard testified that after she assisted the claimant to a sitting position, off of her knee:

A charge nurse came in. Our charge nurse named Tara. She came in because she said she heard the resident outside the door, outside the shower room door hollering and carrying on and everything. And she didn't know what was going on. And she seen Candy sitting in the floor. And she's like Candy, are you okay? And you know me and Candy's like no, you know. She's got hurt, you know, the resident kicked her and she fell and all that. And she said well, we need to get Candy up front to the office and get an incident, accident report filled out.

Once we got Candy up on her knees, I mean on her feet, she put her arm around my shoulder. And I put my arm under her and around her, you know like around her waist. And helped her up to the front office. (T. 13-14).

With respect to securing medical treatment for the claimant following the January 25,

2006, incident, Ms. Burchard testified:

After I helped Candy to the office and I filled out my witness form, I had to go back to the shower room to finish taking care of the resident. And about 10 to 15 minutes later after I got the resident dressed and put back in her wheelchair and sent her to her room I went up to the front office to check on Candy. And she said that the administrator had called her husband at work and they were going to, that Andy was going to come get her because she needed to go to the emergency room. (T. 15).

Ms. Burchard's testimony reflects that she was up in the area of the front office when the claimant's husband, Andy, arrived to pick up the claimant.

The testimony of Ms. Burchard corroborate that of the claimant with respect to the claimant's job duties while on light/limited duty release following the January 25, 2006, accident. Ms. Burchard testified that while the claimant was at work performing light duty following the January 25, 2006, accident in February 2006, she observed swelling in the claimant's right knee:

It was, her right knee was swollen from the front - - it was mainly the front - - it was mainly the front of the knee. (T. 16).

Ms. Burchard recalled the claimant returning to work for respondent following her April 2006, right knee surgery. Regarding her observation of the claimant since returning to work following her April 5, 2006, right knee surgery, Ms. Burchard testified:

Once in a while she still has a limp to her right leg. If she's walking a lot, I'll notice her sitting down or taking a break for a few minutes because her leg, she says that, you know, her leg's bothering her. (T. 18).

Ms. Burchard also described the condition of the claimant's right knee since the April 5, 2006, surgery:

When you place your hand on her right knee, it feels like a grinding. And before her surgery, you could actually hear it grinding when she went to move it. And after the surgery you could still feel it. (T. 18).

On cross-examination Ms. Burchard explained the circumstances under which she came to observe the claimant's right knee following the April 5, 2006, surgery:

She would say that it was hurting her. And she would be like look, it's hurting, feel it. And when I did it, you know, she would just tell me it was hurting and stuff. And she wanted us to see that she wasn't lying about how bad it was hurting. It was popping and grinding. (T. 19-20).

Ms. Burchard noted that when the claimant returned to work on light duty in March 2006, she had some visible swelling in the right knee:

The swelling? When her leg was bothering her, when she was at work, she would pull her pant leg up, and we would be feeling of it and we could see the swelling. And she would have to sit down, if she was up doing too much work. She would sit down because it was hurting her at the nurse's station. (T. 21).

The parties stipulated that if called to testify, the testimony of the Andy Wyss, the claimant's husband would be corroborative of that of the claimant.

The medical in the record reflects that the claimant was seen at the emergency room of Piggott Community Hospital on January 25, 2006, at 12:40 p.m. regarding a right knee injury. The emergency report reflects that the claimant provided a history of having been kicked at work as the basis for the injury and need for medical treatment. X-rays of the claimant's right knee were obtained during the visit. The emergency room records also reflects that the claimant was provided medication, Percocet, a 16" right knee immobilizer, prescriptions for crutches, ibuprofen and Darvocet. Claimant was furnished an off work excuse by the attending emergency

room physician directing her to remain off work from January 25, 2006, through February 1, 2006. Also the emergency room records reflect that an MRI was scheduled for the claimant at 11:00 a.m. on January 26, 2006, and that an appointment was scheduled for the claimant to be seen by Dr. Schechter for 9:45 a.m. on January 31, 2006. Claimant's injury was diagnosed the Dr. Larry Lawrence, the attending emergency room physician, as right knee injury. (CX. #1, p. 7).

On January 26, 2006, claimant underwent a MRI scan of her right knee at Arkansas Methodist Medical Center in Paragould. The MRI report reflects, in pertinent part:

32 year old patient kicked in the medial aspect of the knee. She has pain and burning on the inside portion of the knee. She has popping in the knee.

Sigittal T-1, fat saturated proton density, sigittal, coronal and axial imaging was obtained with DESS and meniscal windowing in the sagittal plane. Patellar tendon is intact. Posterior and anterior cruciate ligaments are intact. Moderate joint effusion is present. Medial collateral ligament is intact. Patellar retinaculum is intact. Grade II signal abnormality in the posterior horn of the medial meniscus is identified. Abnormal signal at the origin and proximal one third of the lateral collateral ligament is identified.

OPINION: No meniscal tear identified. Joint effusion.
Abnormal signal about the lateral collateral ligament, consistent with post traumatic strain.

(CX. #1, p. 8)

On January 27, 2006, the claimant was seen at Family Care Clinic of Rector, respondent's designated medical provider. After reciting the history of the claimant's January 25, 2006, right knee injury and medical treatment receive relative to same, the January 27, 2006, report reflects, in pertinent part:

. . . The nursing home sent her over here today for follow up at the

ER. It was recommend that she see an orthopedist but they could not do that without a PCP referral from the nursing home's Workman's Comp physician, Dr. Greene. Still, even with my recommendation, they are going to evaluate it and decide what they want to do. The MRI showed no meniscal tear identified. This did show a joint effusion, abnormal signal about the lateral collateral ligament consistent with post traumatic strain. I explained to the patient the differences between strains. She already had Darvocet N 100 at home, Diclofenac, but are saying that does now work well. . . .

. . . . The patient is wearing a brace and I decided not to take that off with the other information that I have. Because of the report from the MRI, we are going to recommend to the nursing home that they send her to an orthopedist, possibly for aspiration of the joint, for further evaluations. I did give her a work slip to off work until February 10th . I encouraged her in bending exercises which she says hurts. Physical therapy, when she is home, she is to keep it elevated and she can keep the brace off too. . . .(CX. #1, p. 10).

On January 31, 2006, the claimant was evaluated by Dr. Ron D. Schechter, a Paragould orthopedic physician, pursuant to the referral of Dr. Larry Lawrence, the January 25, 2006, attending emergency room physician at Piggott Community Hospital. The January 31, 2006, report reflects, in pertinent part:

She reports she was previously well without any prior right knee problems. Then on January 25, 2006, she had an injury at work. She describes that she was helping a nursing home resident shower and the resident kicked her in her knee and she fell. She felt a pop in her knee but is not quite sure exactly how the knee was injured. She presented to the emergency room In Piggott. . . .

* * *

Knee Exam

Observations: No deformity or atrophy.
The patient walks with a Antalgic limp on the right.
Standing Alignment: Normal.
NV Exam: NVI distally.
Swelling: Some mild prepatellar swelling. No effusion.

Knee Tests

Comments: The knee felt stable with stress testing, but she was guarding (sic) so the exam is limited. Unable to do good meniscal testing secondary to pain with flexion.

X-Rays

She presented with outside x-rays and an MRI from January 26, 2004 and at the hospital. The x-rays and MRI both appear normal. The radiologists questioned and abnormal signal around the lateral collateral ligament, but by my review this appears normal.

Assessment and Plan

Diagnosis:

719.46	Pain In Joint, Lower Leg
924.11	Contusion, Knee

I reviewed the injury with the patient and advised as follows. Her x-rays and MRI showed no sign of any ligamentous or cartilaginous injury. I do not think she has any serious injury. I think based on her clinical exam that she just has a contusion to her anterior knee and quadriceps insertion. Her extensor mechanism clinically is intact and she can do an active straight leg raise. Accordingly we are going to just do comfort measures as needed and let her proceed with activities as tolerated. I advised her to try and discontinue the brace and wean off crutches as tolerated with weight bearing as tolerated and to do aggressive motion. I will limit her to duty of work for now for comfort reasons. I will see her back in about 10 days to check her progress to see when she's ready to return to full duty. If she is struggling to recover we may consider therapy later on. (CX. #1, p. 12-14).

The follow up visit of the claimant to Dr. Schechter of February 9, 2006, yield the following results:

Physical Exam

She is walking with a very stiff leg and gait with the knee held flexed. She has pain and stiffness with attempted full extension and extremes of flexion.

Assessment and Plan

She is improving, but not as well as I would like. She is walking with a significant stiff leg antalgic limp and has not regained her motion. Given her insufficient progress, I recommended formal therapy and she agreed. We will proceed with three weeks of therapy pending work comp approval and then I will reevaluate her. (T. 15).

The February 9, 2006, physical therapy order of Dr. Schechter relative to the claimant reflects a diagnosis of right knee anterior contusion with patellar tendonitis and early flexion contracture. (CX. #1, p. 16).

On February 27, 2006, the claimant was again seen at the emergency room of Piggott Community Hospital relative to her right knee injury. After noting the claimant's prior medical treatment regarding her right knee work-related injury, to include the earlier January 25, 2006, visit to the emergency room, and follow up care and treatment, the February 27, 2006, emergency room records reflect:

. She has had an MRI that showed fluid but no significant damage per patient. She has been receiving physical therapy. Dr. Schechter has been in charge of her care. Today she received therapy. She has been trying to walk without crutches. She complains of severe pain in the right knee. She has swelling tonight but it was worse last night.

PHYSICAL EXAMINATION: EXTREMITIES: mild edema in the right knee. Crepitus with full range of motion. It is very tender. Positive patellar apprehension. Negative pivot shift. Normal pulses, normal sensation. (CX. #1, p. 24).

Dr. Lawrence, the attending emergency room physician during the February 27, 2006, visit of the claimant aspirated 5cc's of fluid from the claimant's right knee during the visit. (CX. #1, p. 20-24).

Claimant was seen in follow up by Dr. Schechter on March 2, 2006. The March 2, 2006, report, relative to the visit, reflects, in pertinent part:

She reports that she is no better. She says therapy has not helped at all. Her pain got so bad that she actually went to the ER over the weekend and describes that the knee was aspirated with removal of five cc of fluid. She was released from the ER on nonsteroidals and narcotics with mild relief. Currently, she reports she is doing worse with pain generalized around the anteromedial knee with catching sensations in the knee. Of note, the patient's physical therapist called me today saying that she was not progressing well and in fact was regressing in her motion. I asked the therapist if he felt like the patient was giving good effort or if she might have some secondary gain issues and he said he could not tell for sure but was concerned about the possibility of lack of effort and secondary gain issues.

PHYSICAL EXAM

She is still walking with a very stiff leg and antalgic limp. There was no visible swelling or effusion. When she was just sitting in the chair she seemed to flex her knee to 80 degrees actively without any discomfort. However, when I try to bend her knee to 70 degrees on the examining table, she was very dramatic and resisted secondary to pain. Her knee felt stable with no palpable mechanical signs.

Assessment and Plan

I reviewed the patient's case and progress with her and discussed options. She continues to have pain despite conservative treatment. She is now having worsening pain and some mechanical symptom. Her x-rays and MRI appeared benign. However, it would be theoretically possible that she could have an intra-articular injury that would not be well visualized on the MRI. For example, she could have a chondral lesion on the under-surface of her kneecap that could cause pain in mechanical symptoms but would not be well seen on the MRI or she could have a swollen and pinching plica. Given her lack of improvement, the next option would be arthroscopy. However, I want to mention that I have concerns her about secondary gain issues. I believe that based on her mechanism of injury, it is more likely that she does not have a serious intra-articular injury than that she does have a serious injury. I believe that most likely she just had a knee contusion. I am also concern about inconsistencies on exam with dramatic discomfort on range of motion to 70 degrees , but when she is distracted, she seems to be comfortable with flexion at 90 degrees. The next option I see would be to do an arthroscopic evaluation of the knee with treatment as indicated based on intraoperative findings. I would not be surprised if she had a normal arthroscopic exam. Nevertheless, I feel

it is possible she could have an intra-articular injury that was missed by the MRI and before just discounting this as secondary gain issues and the patient not wanting to work, I think we're going to be forced to do an arthroscopic exam to rule out other injury. I discussed the option of orthotopic exam the patient and she wants to proceed. Work comp needs to review the case to decide what they want to. If they approve arthroscopy we will bring her back in for a 15 minute preoperative appointment. She will need to stop her nonsteroidals 10 days before surgery. (CX. #1, p. 28-29).

A March 2, 2006, off work slip was authored by Dr. Schechter directing the claimant to remain off work. (CX. #1, p. 30).

On April 5, 2006, Dr. Schechter performed a diagnostic arthroscopy on the claimant's right knee. The operative report of the afore reflects, in pertinent part:

I reviewed the case with the patient's husband in the OR waiting room. I explained that there were no significant findings. I advised him that overall I felt, based on everything we have done so, she most likely had a knee contusion with no serious injury. I think the best form of treatment for her would be to get her back normal activities as soon as possible and try and let her gain strength by doing her normal activities. I would expect her symptoms to resolve. I advised that I thought it might be reasonable for her to have difficulty standing on the leg for at least 2 weeks, but hopefully from there we could transition back to work.

As a side note, I think the patient's symptoms are out of proportion to what I would expect. It is not clear if she has secondary gain issues but I do have concerns about psychosomatic components to her problem. She had significant limitations in motion but under anesthesia had full motion and had a normal arthroscopy. I would recommend activity as tolerated as described above.

I will re-evaluate her in approximately 10 days and try and transition her back into work from there. (CX. #1, p. 37).

Claimant was seen in follow-up by Dr. Schechter on April 13, 2006. The report relative to the visit reflects, in pertinent part:

Assessment and Plan

She seems to be doing fine in her recovery so far. Her wounds look good and her sutures were removed today. I reviewed the intra operative findings with her and discussed them as described in the operative report. Essentially, she had a normal diagnostic arthroscopy. I shaved down some of her infra-patellar fat pad in case it was causing a soft tissue impingement problem, but the fat pad did not look at all irritated to suggest impingement. Given the lack of any identifiable significant problem, I advised that I thought her best option for recovery was to try returning to normal activities and use of the leg as soon as possible. Hopefully with time and activity her symptoms will resolve. The more she favors the leg, the more weak it will become. She voiced understanding. I'm going to give her a note for light duty for two more weeks to allow her time to recover from the arthroscopy and then let her return to full duty with no restrictions. She can call as needed with problems. (CX. #1, p. 39).

Responsive to a letter from respondent's attorney, Dr. Schechter authored a July 25, 2006, clinic note relative to the claimant. The afore, reflects, in pertinent part:

In response to the attorney's questions, I would say the following. The patient did not have any objective medical findings to substantiate her alleged injury. Based on the lack of objective findings and my examination through the arthroscopic procedure I can find no reason that the patient should have been disabled for any significant length of time. She may have sustained a knee contusion which could have given her some discomfort and limited her activity for perhaps a couple of weeks, but not the length of time that she had her reported disability. During the arthroscopic procedure I performed a limited synovectomy and fat pad removal. I did this because sometimes these tissues can impinge in the knee and cause pain. These tissues can sometimes be irritated and swell from trauma. However, as described in my operative report, her fat pad and surrounding tissue appeared normal with no signs of irritation or inflammation to suggest any problem related to a work injury. Nonetheless, I remove these tissues because this is a harmless procedure and I hoped that perhaps if it was impinging, that removal that might relieve her symptoms. Still, I do not think that this had anything to do with her alleged injury at work given the lack of objective abnormalities. I'll be available for further questions as needed. (RX. #1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical records and other documentary evidence, application of the appropriated statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 25, 2006, the relationship of employee-employer existed between the parties.
3. On January 25, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$177.00/\$154.00, for temporary total/permanent partial disability.
4. On January 25, 2006, the claimant sustained an injury to her right knee arising out of and in the course of her employment with respondent.
5. The claimant was temporarily totally disabled for the periods beginning January 27, 2006, through February 6, 2006, and March 2, 2006, continuing through April 16, 2006.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's right knee injury of January 25, 2006.
7. The respondent has controverted this claim in its entirety.

CONCLUSIONS

The claimant asserts that she suffered in injury to her right knee on January 25, 2006, within the course and scope of her employment which required medical treatment and rendered her totally incapacitated from engaging in gainful employment for a period of time. As a consequence of the afore, claimant asserts entitlement to corresponding temporary total and medical benefits. Respondent assert that the claimant did not sustain a compensable injury. Further, respondent maintains that even if the claimant did sustain a compensable injury, the surgery that she underwent was not reasonable or necessary.

The present claim is one governed by the provisions of Act 796 of 1993, in that the

claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. §11-9-102 (4) (A) (i).

Claimant discharged duties as a certified nursing assistant in the employment of respondent, and had do so since September 2005. There is no evidence in the record to reflect that the claimant experienced physical limitations or restrictions on her employment activities prior to January 25, 2006. Neither is there evidence in the record to reflect that the claimant experienced any difficulty with her knees prior to January 25, 2006. The evidence preponderates that while the claimant and a co-worker were showering a resident of respondent, during the course of her employment, the claimant was kicked by the resident and fell to the concrete surface on both knees. The claimant impacted greater with her right knee than the left knee in the accident.

The January 25, 2006, accident of the claimant, in addition to being witnessed by a co-worker, was reported to the charge nurse within close proximity of its occurrence. Claimant was directed by respondent to the emergency room of the Piggott Community Hospital after the designated medical provider of same, Family Care Clinic of Rector, was unable to see her. The

medical records of the Piggott Community Hospital emergency room regarding the January 25, 2006, visit of the claimant noted marked tenderness on both sides of patella as well as patella apprehension. Claimant was provided Percocet and a knee immobilizer, furnished prescriptions for Darvocet, ibuprofen and crutches, all relative to the right knee. Additionally, a MRI scan was scheduled for the following day and an orthopedic referral made.

The January 26, 2006, MRI of the claimant's right knee disclosed the presence of "moderate joint effusion" and a Grade II signal abnormality in the posterior horn of the medial meniscus was identified. The afore were consistent with post traumatic strain. During a February 27, 2006, emergency room visit five cc's of fluid were aspirated from the claimant's right knee. The medical records, as noted above, are replete with objective findings in the claimant right knee evidencing the injury to the right knee. The claimant and her co-worker have presented credible testimony of the presence of swelling in the claimant's right knee following the January 25, 2006, accident. The claimant has sustained her burden of proof by a preponderance of the evidence that she suffered an injury to her right knee arising out of and in the course of her employment with respondent on January 25, 2006. Respondent has controverted the claim in its entirety.

Ark. Code Ann. §11-9-508 (a) requires employers to provide such medical services as may be reasonably necessary in connection with the employee's injury. What constitutes reasonable and necessary treatment is a fact question. *General Electric Railcar Services v. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998). In the instant claim the claimant treating orthopedic physician performed a diagnostic arthoscopic procedure on April 5, 2006. The bases for the procedure were outlined by Dr. Schechter in clinical records leading up to the procedure.

The claimant does not have to support a continuing need for medical treatment with “objective medical findings”. *Chamber Door Industries, Inc., v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997). The evidence preponderates that the medical treatment which was provided to the claimant, to include the April 5, 2006, diagnostic arthroscopic procedure, was reasonable and necessary in connection with the January 25, 2006, compensable right knee injury.

Claimant suffered a scheduled injury to her right knee in her January 25, 2006, compensable accident. An employee who suffers a scheduled injury is to receive temporary total or temporary partial disability during the healing period or until returning to work. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). In the instant claim, claimant furnished off-work slips authored by her treating physician relative to her compensable right knee injury to respondent. Claimant has sustain her burden of proof by a preponderance of the evidence that she is entitle to the payment of temporary total disability benefits for the periods stipulated.

AWARD

Respondent is herein ordered and directed to pay to the claimant temporary total disability benefits for the period beginning January 27, 2006, through February 6, 2006, and March 2, 2006, continuing through April 16, 2006, at the weekly compensation benefit rate of \$177.00, as a result of the January 25, 2006, compensable right knee injury. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses growing out the claimant’s compensable injury of January 25, 2006, to include medical related travel.

Maximum attorney fee is herein awarded to the claimant's attorneys on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, Administrative Law Judge