

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503349

NEIL BERRY	CLAIMANT
SUPERIOR INDUSTRIES, SELF INSURED	RESPONDENT
CROCKETT ADJUSTMENT COMPANY, TPA	RESPONDENT

OPINION FILED JULY 27, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 4, 2007, in Springdale, Arkansas.

A pre-hearing order was entered in this case on February 13, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order has been made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On March 15, 2005, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation benefits are \$409.00 for total disability and \$307.00 for permanent partial disability.
3. On March 15, 2005, the claimant sustained a compensable injury to his right knee.

4. There is no dispute over the payment of medical expenses through October 20, 2006.
5. There is no dispute at present over temporary disability benefits.
6. Respondents have paid permanent partial disability for a permanent physical impairment of 10 percent to the leg.

By agreement of the parties, the issue to be litigated and resolved at the present time was limited to the following:

1. The claimant's entitlement to additional medical services, specifically a knee replacement.

In regard to these issues, the claimant contends:

"Claimant was injured in March 2005. His right knee was injured while he was fixing a pipe at work."

In regard to these issues, the respondents contend:

"Based on the opinion of Dr. Terry Sites, the respondents contend the claimant is entitled to no additional medical treatment arising out of the compensable injury and that any problems to his right knee are due to his pre-existing degenerative problems."

#### DISCUSSION

\_\_\_\_\_The sole issue in this case is the question of the claimant's entitlement to additional medical services for his knee complaints after October 20, 2006. The burden rests upon the claimant to prove that the disputed medical services represent "reasonably necessary medical services" for his compensable injury.

In order to constitute "reasonably necessary medical services", the medical services must have an intended purpose or goal that is connected with the compensable injury. Secondly, the

medical services must have a reasonable expectation of accomplishing this intended purpose or goal, at the time the services were rendered. However, it is not necessary that such medical services were ultimately successful in doing so.

In the present case, the issue of reasonably necessary medical services is complicated by the fact that there is no total consensus among the various physicians involved in this case, as to what type of medical treatment would be the most beneficial for the claimant's right knee complaint, at the present time. Clearly, the pre-hearing order specifically noted medical services in the form of a total knee replacement. While all of the medical experts appear to feel that the claimant will ultimately require a total replacement of his right knee, none of these physicians appear to be expressly recommending such a procedure, at the present time.

In his report of August 2, 2006, Dr. Rodger Dickinson (an orthopaedic surgeon and the claimant's primary treating physician for his compensable injury) stated:

"He is only 43, so hate to talk about doing any kind of total joint on him. I am going to see if Dr. Dougherty will evaluate him and see whether or not he may be a candidate for something like a cartilage transplant. Otherwise just symptomatic treatment."

In his report of September 21, 2006, Dr. Christopher Dougherty (an orthopaedic surgeon) stated:

"If the patient feels that they live their life around their knee, secondary to pain, then the patient should consider a total knee replacement for pain relief...Meniscal transplant will not be of any benefit in this patient. Arthroscopy to address the third intercondylar tubercle of Parsons, clean up

the loosed bodies and repeat microfracture will buy some time, but ultimately this patient will require a knee replacement.”

In his report of September 28, 2006, Dr. Terry Sites (an orthopaedic surgeon, who evaluated the claimant at the request of the respondent) stated:

“I would not be strongly opposed to a consideration for a repeat arthroscopy to perform a synovectomy, removal of loose bodies and materials, addressing meniscal or other pathology.”

Finally, in his report of April 11, 2007, Dr. Dickinson stated:

“The hope was that by doing an arthroscopic procedure on the inside aspect of the claimant’s left (sic) knee, that it may buy Mr. Berry more time, to decrease his pain, make him more functional, and hopefully keep him from having to have a total knee which is where he will probably ultimately end up.

...

I think that it is certainly warranted at this time for consideration of doing a repeat arthroscopy and hopefully being able to do some type of articular cartilage transfer as described by Dr. Dougherty, which may improve his pain, make him more functional, and may also allow him to stove off having to have a total joint replacement.”

Based on the medical evidence presented, it is my finding that the most reasonable and medically appropriate treatment for the claimant’s right knee difficulties, at the present time would be the additional arthroscopic procedures recommended by Dr. Dickinson. It is clearly the consensus of all these medical experts that such a procedure would be more medically appropriate at this time, than a total knee replacement. I further find that

the medical evidence shows that this recommended treatment modality would offer a reasonable expectation of accomplishing its intended purpose or goal of providing the claimant with symptomatic relief and maintaining the level of healing achieved, at least temporarily. It would also offer a reasonable expectation of accomplishing the goal of avoiding or at least delaying the necessity of a total replacement of the claimant's injured right knee.

There is also a dispute in the medical evidence concerning a causal relationship between the claimant's current need for additional medical treatment and his compensable injury. Dr. Dickinson and Dr. Dougherty are both of the opinion that these medical services were necessitated by or connected with the claimant's compensable injury of March 15, 2005. On the other hand, Dr. Sites is of the opinion that the claimant's continuing difficulties and need for treatment are "more likely than not" the result of the claimant's pre-existing degenerative arthritis and not the injury of March 15, 2005. After consideration of all the evidence presented, it is my finding that the opinions of Dr. Dickinson and Dr. Dougherty are entitled to the greater weight and credit.

All three of these physicians are orthopaedic surgeons. However, Dr. Dickinson is the claimant's primary treating physician for the compensable injury of March 15, 2005. He has extensively evaluated and treated the claimant on numerous occasions since that date. He has also had the opportunity to actually view the

internal components and damage to the claimant's right knee from both the pre-existing osteoarthritis and the compensable injury. This visible inspection occurred shortly after the compensable injury, during the arthroscopic procedure on March 29, 2005. He is clearly the most knowledgeable about the status of the claimant's pre-existing osteoarthritis and the continuation or progression of both these conditions thereafter. Both Dr. Dougherty and Dr. Sites have only seen the claimant on limited occasions (Dr. Dougherty seeing him twice and Dr. Sites once). Both of these physicians also initially saw the claimant long after his compensable injury of March 15, 2005. Thus, they would be reasonably expected to have more difficulty in separating the effects of these two conditions.

I further find the opinions of Dr. Dickinson and Dr. Dougherty are more supported by the other evidence presented, which includes both the medical evidence and the lay testimony. The opinions of these two physicians further appears to be the more reasonable and logical in light of this evidence.

Undoubtedly, the claimant had extensive pre-existing osteoarthritis that involved both of his knees, prior to his compensable injury of March 15, 2005, with the involvement of the right knee being more extensive than the left. In fact, the claimant's pre-existing osteoarthritis may have actually made him more susceptible to the employment related injury he sustained on March 15, 2005.

However, the evidence shows that prior to March 15, 2005, the claimant only had sporadic difficulties with his knees and only

required medical treatment on an occasional basis. It further appears that with only relatively brief periods of conservative treatment, the claimant's symptoms resolved. It further appears that he missed little or no work as a result of these prior episodes of difficulties and was able to function in a relatively normal manner. However, after the compensable injury of March 15, 2005, the claimant has had constant significant complaints, which have never resolved. Although Dr. Dickinson indicated that the claimant had reached maximum medical improvement on December 7, 2005, it is apparent from Dr. Dickinson's records that the claimant's compensable injury of March 15, 2005, had not totally resolved and that the claimant had not and would not return to his pre-injury state.

The operative report of Dr. Dickinson indicates that the compensable injury of March 15, 2005, resulted in a large portion of the protective cartilaginous covering over the surface of the bone of the claimant's medial femoral condyle in his right knee. This protective cartilaginous covering, is necessary to provide a smooth protective surface over the bone of the medial femoral condyle so as to allow it to move smoothly. This covering will not regenerate. The loss of this substantial portion of the protective covering of this surface would clearly increase the wear and tear on the joint and interfere with its normal function. For this reason, Dr. Dickinson assessed a permanent physical impairment of 20 percent to the knee and an additional 10 percent to the knee for resulting loss of range of motion. He also noted that this

permanent physical damage would place the claimant at an increased risk of developing further arthritic changes to the medial compartment of his right knee. Clearly, such extensive permanent physical damage would reasonably be expected to, in and of itself, ultimately result in arthritic changes to this portion of the joint. Such a result would be even more likely in an individual with a history of osteoarthritis.

The subsequent reports and records of Dr. Dickinson show that the claimant has continued to experience extensive complaints involving the medial compartment of his right knee, which was the area of his March 15, 2005 employment related injury. Dr. Dickinson's records further show progressive deterioration of this particular portion of the knee.

Osteoarthritis, such as that experienced with the claimant, is by nature a progressive disease. However, there is no question that it can be exacerbated or accelerated by additional trauma, such as the claimant's compensable permanent injury of March 15, 2005. In fact, even Dr. Sites even recognized this fact. In his report, he concedes the compensable injury exacerbated the claimant's pre-existing arthritic condition.

To use Dr. Sites' phrase, it is simply more likely than not, that the claimant's current difficulties and the current overall condition of his right knee are a combination of the effects of both the pre-existing osteoarthritis and the additional trauma and permanent damage caused by his compensable injury. It is this current overall condition of the claimant's right knee that is

necessitating his present need for the medical services recommended by Dr. Dickinson.

In order to be entitled to medical services at the respondents' expense, under Ark. Code Ann. §11-9-508, there is no requirement that the claimant's compensable injury be the sole or even major cause of the current condition with his right knee, only that it must have played some causal role in producing at least some portion of this current condition. As the claimant's compensable injury was the result of a specific incident, there is also no need that he prove that the employment related contribution to the current condition of his right knee is even the major cause of his present need for medical treatment.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On March 15, 2005, the relationship of employee-self insured employer existed between the parties.
3. On March 15, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$409.00 for total disability and \$307.00 for permanent partial disability.
4. On March 15, 2005, the claimant sustained a compensable injury to his right knee.
5. There is no dispute over the payment of medical expenses incurred through October 20, 2006.
6. The medical services provided and recommended to the claimant for his right knee difficulties by and at the direction of

Dr. Rodger Dickinson, on and after October 20, 2006, represent reasonably necessary medical services for the claimant's compensable injury, under the provisions of Ark. Code Ann. §11-9-508. Specifically, the claimant has proven by the greater weight of the credible evidence that such medical services were necessitated by or connected with his compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. However, at the present time, this does not include a total knee replacement.

7. The respondents have controverted the claimant's entitlement to any additional medical services, after October 20, 2006.

8. As no controverted benefits have been herein awarded directly to the claimant, no controverted attorney's fee can be awarded.

#### ORDER

The respondents are liable for the expense incurred by the claimant as the result of medical services provided and recommended to him by Dr. Rodger Dickinson for his right knee difficulties, on and after October 20, 2006. This liability is subject to the medical fee schedule established by this Commission.

All benefits awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE