

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F605281

MARY A. COLEMAN, EMPLOYEE	CLAIMANT
FRIEDMAN'S, INC., EMPLOYER	RESPONDENT
AMERICAN PROTECTION INSURANCE COMPANY, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED AUGUST 23, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on July 20, 2007, at Forrest City, St. Francis County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Michael R. Mayton, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted July 20, 2007, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on May 30, 2007, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the proposed stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to a clarification concerning the permanent impairment respondents previously paid. For reasons set out further below, all of the proposed stipulations cannot be accepted as fact because they are inconsistent with the claimant's testimony, as well as the record as a whole. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" without objection.

The claimant has, on multiple occasions, including at the hearing on this claim, been advised of her right to legal representation; that an attorney could not charge her a fee for representing her in a workers' compensation claim without approval of this Commission; that fees were normally awarded only out of benefits obtained in her behalf, and that she would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for her. In addition, the claimant was advised, on numerous occasions, that she had the burden of proving her claim; that she was only entitled to one hearing; and that, for any reason, if she was unsuccessful, she could not request a second hearing while maintaining that the reason for any failure to prove the claim was lack of legal representation. The claimant elected to proceed in her own behalf.

By agreement of the parties, the following issues are presented for determination:

- 1) Whether the claimant is entitled to additional medical treatment.
- 2) Whether the claim is barred by statute of limitations.

Claimant contended, in summary, that she has, at all times, required additional follow-up medical treatment for her admitted injury; that respondents should be responsible for any outstanding medical related to follow-up visits by her authorized treating physician, Dr. Stroope, together with continued, reasonably necessary medical treatment, including, but not limited to a total knee replacement which has been recommended by Dr. Stroope. The claimant did not request any

total disability benefits at this time, but requested prospective temporary total disability in the event the total knee surgery was approved.

The respondents contended that it had paid all appropriate benefits to which the claimant was entitled; that the claim for additional benefits was barred by statute of limitations; and, finally, even in the event the claim was not time barred, the claimant cannot prove that she was entitled to a total knee replacement as the result of the August 4, 1999, admitted injury.

The claimant was the only witness to testify. The record is composed solely of the transcript of the July 20, 2007, hearing containing numerous exhibits.

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 claimant and to observe her 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. On August 4, 1999, the claimant sustained a compensable left knee injury which arose out of and during the course of her employment with Friedman's, Inc.
3. Respondents have paid all indemnity benefits at the rate of \$153.00 per

week for both temporary total disability and permanent partial disability.

4. The claimant's healing period ended on March 5, 2001, at which time Dr. Stroope assigned a seven percent (7%) impairment to the left lower extremity which has been paid.
5. Respondents have paid for reasonably necessary follow-up treatment through March 28, 2006.
6. The claimant has proven, by a preponderance of the evidence, that she is entitled to continued, reasonably necessary follow-up treatment for her left knee provided by Dr. Henry F. Stroope.
7. The within claim is not barred by statute of limitations. The claimant filed a claim for additional benefits on May 11, 2006, which was within one year from the date of payment of last compensation.
8. Respondents have controverted claimant's entitlement to all additional benefits.
9. Issues not addressed herein are specifically reserved for future determination.

DISCUSSION

_____The claimant, Mary A. Coleman, testified in her own behalf. The claimant is fifty-one (51) years old. She has a high school education. The claimant's primary work experience has been in retail sales. At the time of the hearing, the claimant was working as a sales associate for First American Cash Advance. Prior to that

employment, the claimant worked in jewelry sales for the respondent, Friedman's, Inc. The claimant stated that she first went to work at Friedman's in 1998. She stated that she was a full-time employee, earning \$8.00 per hour. She stated that her gross salary was approximately \$14,000.00 per year in 1999. Because of this testimony, I could not accept the proposed stipulations concerning the applicable compensation rates. I feel compelled to point out that if the claimant's testimony is accurate, that the respondents may have underpaid the claimant for any brief period of temporary total disability. However, if the claimant's testimony is correct, then the applicable compensation rate for permanent impairment would be \$154.00 per week rather than \$153.00 per week which is not significant. The compensation rate was not relevant because there was no issue raised concerning additional indemnity benefits. (Tr.14)

It is undisputed that the claimant sustained an injury to her left knee on August 4, 1999. The claimant was walking up some steps, carrying mail to the post office when she fell, landing on her left knee. The claimant was first seen by her family physician, Dr. Beaton at the Wynne Medical Clinic. Dr. Beaton subsequently referred the claimant to Dr. Henry F. Stroope, an orthopedic surgeon in Jonesboro, Arkansas. Dr. Stroope has remained the claimant's primary care physician. Initially, Dr. Stroope treated the claimant conservatively and the claimant did not miss any work. The claimant was ultimately required to undergo cartilage repair of the left knee in June, 2000, which was paid by the respondents. The claimant only missed

eleven (11) days of work and was apparently paid temporary total disability during that time. The claimant returned to work for Friedman's until its store closed down. The claimant then drew unemployment compensation until going to work for First American Cash Advance during 2001. The claimant has continued to work for First American since that time and was working at the time of the within hearing. The claimant stated that during the fall of 2001, she received a lump sum payment in excess of \$1,900.00 which represented a seven percent (7%) impairment to the left lower extremity assessed by Dr. Stroope. At the hearing, it was pointed out that the stipulation concerning the three percent (3%) impairment related to a body as a whole impairment assigned by Dr. Stroope. Because the claimant sustained a scheduled injury, it appears that respondents properly paid a seven percent (7%) impairment to the entire left lower extremity. (Tr.6, 18)

The record reflects that after the claimant left respondent's employment, she began having difficulties with her right knee. Although the claimant attributed her right knee problems, in part, to an altered gait caused by the left knee injury, there is no claim for a right knee injury. Dr. Stroope began treating the claimant for both her compensable left knee injury, as well as her right knee problems. In fact, the claimant underwent a total knee replacement on the right side. The medical for claimant's knee replacement was paid by her health insurance through First American. Dr. Stroope has, at all times, continued to treat the claimant for both her compensable left injury, as well as for the right knee. In fact, the record reflects that

Dr. Stroope, as well as the administrator for the workers' compensation carrier has separated the medical treatment for the bilateral extremities. All follow-up treatment for the right knee has been paid by claimant's health insurance and all treatment for the left knee has been paid under workers' compensation.

Despite the proposed stipulation that respondents paid follow-up medical treatment by Dr. Stroope at all times prior to April 27, 2004, the record reflects that respondents paid for medical treatment through March 28, 2006. The claimant's testimony concerning the benefits paid, to date, as well as her request for additional treatment follows:

Q Okay. Now, Respondents indicated and you've stipulated, they admit that they've paid medical through treatment of April 27th of '04, but, in fact, you went back to Dr. Stroope for both the left and right knee after that date, is that right?

A Yes, sir.

Q And did they continue to pay for the treatment to your left knee after April of '04?

A Yes, sir.

Q When did you learn that they were no longer going to pay for your left knee?

A March, I went to the doctor March 28th of 2006.

Q Okay.

A And when I got back home, I called Broadspire Insurance and spoke with Ms. Dawn.

Q Called who?

A Broadspire Insurance.

Q I'm not familiar with them. Who's that?

A That's the insurance carrier for Friedman's.

Q Are you talking about health insurance or workers' comp?

A Workmen's comp.

Q Okay.

A That's who I always speak with. They always answer it as Broadspire when I call them.

Q So it wasn't American Protection Insurance Company?

MR. MAYTON: They used to be Kemper.

THE CLAIMANT: Kemper, yeah, a long time ago it was Kemper.

MR. MAYTON: Kemper was sold out and Broadspire was the administrator.

BY JUDGE GREENBAUM:

Q Okay.

A I spoke with Ms. Dawn, and she was the one that told me my statute of limitations rights had expired in January 2005. She said that was the last payment that they had sent, was the mileage payment for January 2005.

Q And when did you learn that?

A In March of 2006.

Q So had you gone more than a year at that point without seeing Dr. Stroope for you left knee?

A No, sir, I went in September of 2005 and in April of 2005.

Q And who paid for that?

A The workmen's comp carrier, Broadspire.

Q Okay. Well, I'm a little confused then. So when did you first learn that they weren't going to pay any more medical treatment? In other words, what –

A March.

Q March of '06?

A March of '06.

Q What caused you to call them in March of '06?

A Because I was going to make sure I had the correct address on my mileage to send them.

Q Okay. And that's when you were advised that they weren't going to pay any more?

A Right.

Q And so shortly after that, and it's been stipulated, you filed a claim for additional medical with the Commission on May the 11th of '06, is that right?

A That's correct.

Q Okay. And that's what you're asking for?

A Yes.

Q Do you have any outstanding medical for your left knee at this point?

A No, sir.

Q They paid all your medical?

A As far as I can read on these printouts, is that they've paid even March the 28th, and that was the last time I've seen Dr. Stroope, March 28th of 2006.

Q That's been, well, about six months ago, less than six months ago. When are you supposed to go back to Dr. Stroope?

A I haven't made any appointments since March the 28th of 2006 after I had spoke with the lady at Broadspire and filed my claim through workmen's comp

through Little Rock. I haven't seen Dr. Stroope since then.

Q Do you have a scheduled appointment for Dr. Stroope?

A No, sir.

Q Okay.

A On the 28th he was going to do – he had spoke – said that he was going to have to send a letter to Broadspire to get the okay, approval, for he was going to do some injections in my knee to relieve some of the pain, because he wanted to wait until I got a little bit older to do surgery on my left knee, and then that's when they denied any further treatment.

Q Okay. And at this point what you're asking for, since there is no outstanding medical, you are asking that they be required to pay for your follow-up injections by Dr. Stroope, is that right?

A Correct.

Q Anything else you're asking for?

A My knee replacement when he gets ready to do that.

Q Well, I mean, but he's not recommended that at this point? All that he's recommended at this point is injection?

A Injections, and he put in the paper that I do have to have a total knee replacement, but he was just waiting a few more years to do that. (Tr.21-25)

On cross-examination, the claimant acknowledged that she may have gone a full year without receiving any additional treatment for the left knee because, apparently, Dr. Stroope focused on the follow-up examination of the total right knee replacement which was inconsistent with her testimony on direct. However, as set out further below, it is undisputed that respondents continued to pay for claimant's medical evaluations concerning the compensable left knee, and that the claimant

filed a claim within one year from the date of last payment of medical.

Ark. Code Ann. §11-9-702(b) (Repl. 2005) provides:

(b) TIME FOR FILING ADDITIONAL COMPENSATION.

(1) In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

(2) The time limitations of this subsection shall not apply to claims for the replacement of medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as the result of a compensable injury, when the employer or carrier previously furnished such medical supplies, but replacement of such items shall not constitute payment of compensation so as to toll the running of the statute of limitations.

A history of the claimant's medical treatment is warranted. Again, despite the proposed stipulation that respondents paid for follow-up medical treatment at all times prior to April 27, 2004, it is undisputed that respondents paid for medical treatment through March 28, 2006, and that the within claim for additional benefits was filed on May 11, 2006.

On April 27, 2004, the claimant was seen in follow-up by Dr. Stroope for both her left and right knee. X-rays were taken of both knees. Dr. Stroope further reported that Synvisc injections previously administered had done an excellent job of relieving the claimant's symptoms and she was released to return in six (6) months for routine repeat x-rays. (Resp. Ex. A, p.1)

The claimant returned to Dr. Stroope on September 9, 2004, at which time

Dr. Stroope examined both knees. In addition, x-rays were taken of both knees which revealed severe OA of the right knee with bone on bone contact. Dr. Stroope injected the right knee and counseled the claimant regarding the need for replacement arthroplasty of the right knee. Again, the workers' compensation carrier paid a portion of the bill related to the left knee and the right knee was paid by claimant's health insurance. (Resp. Ex. A, p.2)

The claimant underwent a total right knee replacement on October 11, 2004. Thereafter, the claimant received considerable follow-up treatment for the right knee which was the primary area of concern. However, the record reflects that the claimant was seen on April 19, 2005, by Dr. Stroope. Although the primary treatment related to the follow-up of the right, Dr. Stroope also evaluated the claimant's left knee and apparently took x-rays of both. A portion of the visit was billed for workers' comp and a portion under the claimant's health insurance. The claimant was scheduled for a follow-up visit in six (6) months. Again, respondents paid benefits related to the left knee. (Cl. Ex. 1)(Tr.23)

The claimant returned to Dr. Stroope on September 6, 2005. Once again, Dr. Stroope re-evaluated both knees. He specifically stated that the claimant had x-rays of her left knee taken that day for follow-up on her workmen's comp which showed minimal loss of the medial joint space and also some minimal loss of the patellofemoral joint space, both consistent with moderate arthritis. He recommended that the left knee be x-rayed in about a year to check on the

deterioration of her arthritis. Again, respondents paid for a portion of this follow-up visit. (Resp. Ex. A, p.14)(Tr.23)

The claimant's last visit to Dr. Stroope regarding her left knee was on March 28, 2006. Dr. Stroope recommended visco supplementation therapy (believed to be a follow-up injection) which was the only medical that the claimant was requesting at the time of the within hearing. Again, respondents paid for the office visit; however, then notified the claimant that it was no longer going to pay any benefits which necessitated the claimant's filing a claim for additional benefits on May 11, 2006. (Tr.23-24)

The record reflects that respondents paid workers' compensation benefits for treatment on April 27, 2004; September 2, 2004; April 19, 2005; September 6, 2005; and March 28, 2006. The claim for additional benefits was filed on May 11, 2006, clearly within one year of last payment of compensation. Respondents' primary defense that the within claim is barred by limitations is totally without merit.

ADDITIONAL MEDICAL TREATMENT

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. v.*

Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *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 she is entitled to the additional medical treatment recommended by Dr. Henry F. Stroope an authorized treating physician. Respondents' unilateral decision to terminate the follow-up care is simply not supported by the record as a whole. I feel compelled to point out that the only medical treatment that Dr. Stroope was recommending at the time of the within hearing concerned injections to treat the claimant's left knee and follow-up x-rays. By necessity, claimant's entitlement to additional benefits has been specifically reserved.

AWARD

Respondent, American Protection Insurance Company, is hereby directed and ordered to pay continued, reasonably necessary follow-up treatment recommended by Dr. Henry F. Stroope for treatment of the claimant's left knee.

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge

**ARKANSAS WORKERS' COMPENSATION COMMISSION
324 SPRING STREET
LITTLE ROCK, ARKANSAS 72201**

TO ALL PARTIES:

**THE FOLLOWING IS IMPORTANT, PLEASE COMPLY
APPEALS AND CROSS-APPEALS TO THE FULL COMMISSION**

Appeals and cross-appeals to the Full Commission are governed by Section 25 of Initial Measure No. 4 of 1948, as amended (Ark. Code Ann. §11-9-711), and Commission Rule 25.

A party wishing to appeal from an Order or Award of an Administrative Law Judge shall petition the Commission for review, in writing, within thirty (30) days of receipt of the Order or Award. Cross-appeals shall be filed within fifteen (15) days after the appeal is filed with the Commission or within thirty (30) days of receipt of the Order or Award appealed from, whichever is later.

Appealing and cross-appealing parties shall file Notices of Appeal and Cross-appeal with the Commission in duplicate, sending a copy to all other parties. All notices shall bear Certificates of Service. Notices shall set out the style of the case and the grounds for the appeal or cross-appeal.

Appealing parties are requested to specify all issues to be presented on appeal or cross-appeal pursuant to Commission Rule 25(a).

**APPEALS AND CROSS-APPEALS
TO THE COURT OF APPEALS**

Appeals and cross-appeals to the Court of Appeals are governed by the Arkansas Rules of Appellate Procedure and by Section 25 of Initiated Measure No. 4 of 1948, as amended (Ark. Code Ann. §11-9-711, as amended).

APPEALS