

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F506740

PEGGY A. DUGGAN, EMPLOYEE	CLAIMANT
ST. VINCENT HEALTH SERVICE, EMPLOYER	RESPONDENT #1
ALTERNATIVE INSURANCE MANAGEMENT, CARRIER	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED AUGUST 1, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on May 9, 2008 at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondent #1 represented by the HONORABLE WALTER A. MURRAY, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE DAVID SIMMONS, Attorney at Law, Little Rock, Arkansas. Mr. Simmons' attendance was excused.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of additional medical treatment.

At issue is whether or not the treatment is causally related to the compensable injury.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship during 2004 at which time the claimant sustained a compensable scheduled injury at a compensation rate of \$466.00. Medical expenses and temporary total disability benefits have been accepted.

The claimant contends she remains symptomatic from a compensable right knee injury and wishes to pursue treatment (synvisc injections) recommended by Dr. Lowery Barnes.

The respondents controverted additional medical treatment as the injections are unrelated to the compensable knee injury. The claimant suffers from preexisting arthritis.

The following were submitted without objection and comprise the evidence of record: the parties prehearing questionnaires and attached exhibits contained in the transcript along with the deposition of Dr. Lowery Barnes (taken March 11, 2008), incorporated by reference.

The claimant was the only witness to testify at the hearing.

The claimant (D.O.B. June 16, 1962), sustained a compensable right knee injury. Prior to her work-related accident, she had no symptoms in her right knee and had not required any medical treatment for her right knee. She remains symptomatic with pain, a propensity for her knee to “go out”; an inability to climb, and an inability to maintain her work out regimen. She feels the symptoms are becoming progressively worse.

The claimant’s treating physician, Dr. Barnes has recommended injections in an attempt to stave off a total or partial knee replacement.

On cross-examination, the claimant admitted that both knees are symptomatic. Medical records show an old fracture of the patella with probable calcification in the left knee.

MEDICAL EVIDENCE

The claimant began treatment with Dr. Barnes in May, 2004. He suspected a medial meniscus tear of the right knee.

She suffered an injury there (St. Vincent’s) in February. She was helping a patient when the patient fell, twisting her left leg and fell on her right leg. She had previous left knee problems and had partial patiellectomy by Dr. Roger Clark in the past. She has always had problems with this knee. Now she is having increasing pain in her right knee as well. She is having pain and mechanical symptoms and some swelling.

In her history of injury, the claimant wrote, “Assisting a 500 lb. (+) pt to stretcher in ER. He stepped back into me. My L foot stuck to the floor & twisted the L knee & stepped into my R leg causing my knee to pop back.”

MRI scans of both knees taken on May 11, 2004 showed an osseous cyst in the posterior aspect of the right knee and spurring and thinning of the patellar cartilage in the left knee.

Dr. Barnes recommended some changes in her work-out routine in his report of June 9, 2004.

The claimant returned on March 28, 2005 with worsening symptoms which Dr. Barnes

referred to as “chondromalacic in nature.” Dr. Barnes administered a steroid injection.

Arthroscopy on the right knee was performed on July 29, 2005 revealing post-traumatic arthritis of the patellofemoral joint with chondral damage.

Follow-up reports in 2005 show the claimant remained symptomatic and Dr. Barnes recommended a series of synvisc injections for progressive post-traumatic arthritis. A June 27, 2007 MRI scan showed meniscal pathology.

The claimant’s physicians have authored several reports opining that the need for synvisc injections is causally related to the compensable injury.

Dr. Barnes’ report of 6-8-05:

Ms. Duggan does have a cause relationship between her current objective symptomology and her industrial injury of 3-2-04. She had no symptoms prior to her injury and now has profound anterior knee symptoms. These findings are indeed a result of an acute injury on pre-existing degenerative changes.

Dr. Luter’s report of 9-11-06:

- 1) Causal relationship with Ms. Duggan’s current symptomology is that she presented here in 2004 indicating that she had hurt her knee at work.
- 2) The major cause of her symptoms is arthritic changes behind her patella.
- 3) Objective findings include arthroscopy that shows arthritic changes behind her patella.
- 4) Her present condition seems to have all started in 2004 when she hurt her knee.

Dr. Barnes’s report of 9-20-06:

The causal relationship of Ms. Duggan’s current symptomology to her industrial injury of March 4, 2004, in an exacerbation of arthritis in her knee secondary to an injury. It is impossible to know what the major cause of her symptoms is at this time. She apparently had no symptoms in this arthritic knee prior to her injury. Objective findings are crepitation and tenderness at the joint line. She does have degenerative conditions which do contribute to her current complaints.

In his deposition, Dr. Barnes reiterated his opinion that the claimant’s injury aggravated a preexisting arthritic condition.

MR. WILSON:

...the injury that she had or she described to you, was that the type of injury that routinely would cause, in

your opinion, a preexisting arthritic condition to become symptomatic the way she described it.

DR. BARNES:

Yes. Especially for her problem, because it was patellofemoral in nature, so it was behind the knee cap, direct blow to the front of the knee impacts the knee cap into the thigh bone... No difference if a five hundred pound person hits the front of your knee or the floor hits your knee... It's not the bending back of the knee. It's the impact (on) the front of (the knee).

Dr. Barnes indicated he would like to examine the claimant again before assessing the end of the healing period and any anatomical impairment.

FINDINGS AND CONCLUSIONS

The respondents denied this claim contending there was no causal connection between the compensable injury and the synvisc injections.

The determination of whether the causal connection exists is a question of fact for the Commission to determine based on the evidence of record and the credibility of the witnesses. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998), Ellison v. Therma-Tru, 71 Ark. App. 410, 30 S.W.3d 769 (2000).

It is the claimant's burden to prove a causal connection between the work-related accident and the later disabling injury. Lybrand v. Arkansas Oak Flooring Co., 266 Ark. 946, 588 S.W.2d 449 (Ark. App. 1979).

Whenever a medical opinion addresses the causation component of compensability, such medical evidence must still satisfy the statutory requirement that medical opinions be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102, (16)(B), Freeman v. Con-Agra Frozen Foods, 344 Ark. 295, 40 S.W.3d 760 (2001). However, a finding of causation does not need to be expressed in terms of a reasonable medical certainty when there is supplemental evidence supporting the causal connection. Heptinstall v. Asplundh Tree Expert Company, 84 Ark. App. 215, 137 S.W.3d 421 (2003), Horticare Landscape Management v. McDonald, 80 Ark. App. 45, 89 S.W.2d 375 (2002).

In the case at bar, I find the evidence proves that (1) the claimant had no prior history of injury with the right knee; (2) she had not missed work in the months leading up to the accident for problems with her right knee; and (3) there was objective medical evidence of injury following the accident. Therefore, I find the need for treatment is causally related to the compensable injury.

Although not argued by either party in their prehearing “contentions”, the claimant suffered an aggravation of a preexisting condition Williams v. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S. W. 3d 383 (2004), and Dr. Barnes’ recommended injections are reasonable and necessary treatment for this compensable right knee injury.

1. The Workers’ Compensation Commission has jurisdiction of this claim in which an employer-employee-claimant relationship existed among the parties when the claimant sustained a compensable right knee injury.
2. The claimant has proven by a preponderance of the credible evidence of record that Dr. Barnes’ medical treatment is causally related to the compensable injury.
3. The respondents are directed to pay all medical expenses within thirty days of receipt pursuant to Rule 30.
4. If they have not all ready done so, the respondents are directed to pay the court reporter, Linda Parker’s, fees and expenses within thirty days of receipt of the bill.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact above. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS ORDERED.

ELIZABETH W. HOGAN
Administrative Law. Judge