

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F603327 (03/08/06) & F312326 (10/21/03)

HAROLD E. GLENN, EMPLOYEE	CLAIMANT
CITY OF PARKIN, SELF-INSURED EMPLOYER	RESPONDENT #1
CITY OF WYNNE, SELF-INSURED EMPLOYER	RESPONDENT #2
MUNICIPAL LEAGUE WCT, TPA	RESPONDENT

OPINION FILED MAY 21, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 14, 2008, at Forrest City, St Francis County, Arkansas.

Claimant represented by the HONORABLE H. MIKE SMITH, Attorney at Law, Wynne, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-styled claims to determine the claimant's entitlement to additional workers' compensation benefits. On January 8, 2008, a pre-hearing conference was conducted in these claims, 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 contentions of parties relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Harold E. Glenn, the claimant, coupled with medical reports and other

documents comprise the record in this claim.

DISCUSSION

Harold Eugene Glenn, the claimant, with a date of birth of January 11, 1954, has resided at his present address, 12289 Highway 269, McCrory, Arkansas, in Woodruff County, since 1992. Claimant is a high school graduate with a semester of college in business management. Claimant is currently employed by both the city of Hickory Ridge and the city of Pangburn.

Claimant works thirty (30) hours a week, for three (3) days as a police officer Captain for the City of Hickory Ridge and has done so since the latter part of 2006. Claimant explained that his duties in the afore employment included taking care of paperwork and running the traffic in the city as a police officer. Claimant commenced his employment as a police office with the City of Pangburn on December 15, 2007.

From 1979 until 1992, claimant lived in California. Claimant owned his own security company from 1983/84 until 1992, when he sold it and returned home to Arkansas. Upon return home to Arkansas claimant worked with his in-laws on the farm. Claimant has also done electrical work in the past.

Claimant was employed by the City of Wynne as a police officer from 1999 until 2004. On October 21, 2003, while employed by the City of Wynne claimant sustained an injury to his left knee within the course and scope of his employment. In explaining the mechanics of the accident claimant testified:

I was in a pursuit, in a vehicle pursuit with a subject, and he had wrecked his car in front of me, and whenever I stepped out of my car to give chase, I twisted my left knee, and I hurt it. I felt it snap, and it was the meniscus was torn. (T. 14).

Following the accident, claimant received medical treatment on the same day:

Went to the hospital, they put me in a splint or a cast or whatever, I was referred to Dr. Edward Cooper. Dr. Cooper recommended a procedure. Anyway, he went in and micro-surgery on the knee, clipped it, and then it worked for a while, and then we started having pain in the knee, and that's when the injections actually started with the steroids. I couldn't exactly tell you when, I don't know if it was three or four months after that or six months after that. I just don't remember. (T. 14-15).

Claimant testified that during the course of treatment for the left knee injury he underwent a period of rehab at the hospital in Wynne. Regarding his physical abilities prior and subsequent to the October 2003, left knee injury, claimant testified:

Well, prior to that I could run, jump, do just anything I wanted to really, you know, as long as I didn't get short-winded. After that, I couldn't run for a very long distance at all, you know, without the knee starting to get irritated. It could get really sore. (T. 15).

Claimant insist that he had no physical limitation prior to the October 21, 2003, injury. In describing the impact of the October 21, 2003, left knee injury on his physical abilities the testimony of the claimant reflects:

Well, it hindered me to the point to where I couldn't run a long distance, like I said. Probably if I was to run, oh 30 or 40 yards, it would get irritated, and I would have to slow down to a trot, and it would start to build up a little bit of a - - like an aching pain. See, in a patrol car, your knee is bent constantly not getting out, I'd have to get out and stretch. (T. 16).

Claimant commenced his employment with the City of Parkin as a police officer on July 15, 2004. Claimant noted that he started his employment with the City of Parkin as a patrol officer and work his way up to the position of assistant chief. On March 8, 2006, claimant sustained an injury to his left knee. In describing the mechanics of the March 8, 2006, injury,

the testimony of the claimant reflects:

We had had a young man that had tried to hit one of my officers. I was assistant chief at the time, and we were basically chasing this young man around town. I saw him and I exited my vehicle, I went over a fence to chase him, and I got him to stop in a yard. I had him down on the ground and I was handcuffing him when a car hit me from my left side, and it was the chief of police. We had a Chevrolet Camaro, and it just punched me right on the left side of my left knee. I went up on the hood, and the young man went underneath the car, and it scared us both pretty bad. (T. 11).

Claimant's testimony reflects that he appreciated his injury immediately, noting that his symptoms include burning pain in the left knee as well as numbness in the left leg down to his foot. The claimant was seen for medical treatment within 30 to 45 minutes of incident. Claimant was taken to the emergency room in Wynne:

I was admitted. They put me into a waiting room, the doctor was going to do some x-rays, and I was in tears to the point that I asked them to just go ahead and give me something to knock the pain off, just something to ease the pain, and he refused to do it, and that's when I walked out, or rather I hobbled out. I called my brother who was out in the lobby and said, "Take me to Forrest City." (T. 12).

The claimant was taken to the emergency room of Forrest City Hospital. Though not admitted to the hospital claimant did receive treatment at the emergency room of the Forrest City Hospital. X-rays were obtained and claimant received medication for pain, 100 milligrams of Demerol.

Claimant testified that he was uncertain when he next received medical treatment for the knee following the March 8, 2006, visits to the emergency rooms, however he does recall that he was Dr. Edward Cooper, who was continuing the injections in the knee. Claimant's testimony reflects that he received treatment every three or four months. Regarding the frequency of his medical treatment for his knee injury, claimant testified:

I would call Dr. Cooper up and tell him that I was having problems, and I'd ask him to prescribe me some pain medication. In the beginning he did, but after a while he just flat says no. He said, "You need a knee replacement," he said, "I don't want to get you addicted to a narcotic," and he just refused to give me any kind of pain medication, so I just had to deal with it. (T. 13-14).

With respect to the impact of the March 8, 2006, knee injury on physical abilities as well as his ability to perform his job, claimant testified:

Since I had the second injury, I can't run at all. You know, There's days that I just - - there's days when I don't even want to take a step. And there's good days, too, where, you know, it doesn't bother me hardly at all, but to run, even think about running, if I have a subject while at work - - if there were no arms reaching over, I don't have a problem with it, but to pursue someone on foot, climb up and down a hill - - like in Pangburn when we have a - - it's really hilly over there. If we have a search, a river search or something like that, I can't do that. (T. 16).

The testimony of the claimant reflects that since Dr. Cooper has declined to prescribe further pain medication, he now takes over-the-counter pain medication - Tylenol and Advil - in doses greater than recommended. Claimant is desirous of the recommended knee replacement surgery, explaining:

Yes, yes. I'm with the understanding that with the proper medical attention that I can be 95 of better percentage to go back to work, and that's my intentions. I'm not quitting work. (T. 18).

Claimant's testimony reflects that it is his desire to remain in his present line of employment in law enforcement. Claimant observed of law enforcement:

It can be very demanding. You never know when it's going to be demanding, and then there's days when you don't do hardly anything, it's more of a patrol and paperwork thing. (T. 19).

Claimant described a typical day and the impact of his left knee injury on same:

Well, once I get up in the morning, I get dressed to go to work. If I'm on patrol for any length of time, anywhere from 30 to an hour and a half, I have to get out, I have to stretch my leg to get the aching out of my knee. I'll go to the office, I'll sit there for probably, oh, 30 minutes to two hours doing paperwork on the computer, and also just sitting there in the office at the computer, I have to get up and move around. And working in Pangburn especially, we assist the first responders and the medical people. If they need help lifting someone, I can't do that, helping carry people downstairs and stuff. (T. 19).

While the claimant previously lifted weights, worked out and jogged a mile and a half every morning, he no longer does so. Claimant explained that he ceased running because of the knee pain. In rating the pain in his left on a scale of one to ten, claimant testified:

On a bad day, a good nine or better. There's days when the average person wouldn't even get up and go to work. I'm telling you, and I'm not bragging on myself. I am a person that - - I can handle pain, I have dealt with pain all my life. So, there's days when I should stay home, but I go to work with a level of excruciating pain. And then there's days when, you know, if you want to rate it on a scale of one to ten, maybe a two or three. But that's nothing, you know, I can handle that without a problem. (T. 20).

Claimant noted that there are never days that he is not bothered by the knee, if nothing more than ongoing irritation.

Claimant asserts that there is a difference in the pain he experienced in the left knee on a daily basis between the first and second injury and after the second injury:

Oh, yes, there's a difference, yeah. After the first injury, I could, you know, on a bad day be like a five or a six, you know, something that again I could still tolerate, and, too, Dr. Cooper was helping me with pain medication. But after the second injury, and again, I don't remember as far as the time frame goes of when he stopped my medication, but up until that point - - (T. 21).

Claimant was prescribed Darvocet and Percocet for pain by Dr. Cooper. While unsure when Dr. Cooper declined to further furnish prescription pain medication, claimant estimated that it was

within the past year.

During cross-examination, claimant differentiated his job responsibilities as a patrolman versus an assistant chief or captain:

Well, a patrolman's duties is to patrol the streets, assist the citizens, you know, public assistance and stuff. As a chief, it gets into - - or assistant chief or captain, it gets into more administration type thing. You still have the same responsibilities as a patrolman, however, you have to deal with court documents, making sure the patrol cars are kept up, you know. (T. 25-26).

Claimant acknowledged that while working as a patrolman for the cities of Wynne or Parkin he might spend his entire shift as a patrol officer, but now in his present employments (the City of Pangburn and the City of Hickory Ridge), he might spend six hours as a patrol officer and two hours doing paperwork.

Claimant works 30 hours a week as the sole law enforcement officer for the City of Hickory Ridge, and as such is responsible for all his paperwork. In working 40 hours a week for the City of Pangburn, claimant noted his allocation of paperwork versus patrol time is comparable to the job he had with the City of Parkin as assistant chief. Claimant has been working 70- hour weeks since commencing the City of Pangburn job on December 15, 2007. The testimony of the claimant reflects that his separation from the City of Wynne and the City of Parkin had nothing to do with his injury to his left knee.

Claimant noted that while he quit working out with weight, he stays in shape by cutting his own firewood and splitting it every year. Claimant's testimony reflects that he uses a chainsaw and hydraulic splitter in performing the afore tasks. Claimant testified that he is unable to swing a maul anymore due to his leg.

Claimant testified that he did not recall having any troubles with his left knee before the October 21, 2003, injury. Claimant acknowledged that his family physician, Dr. Wilson, is located at the McCrory Family Clinic. Claimant testified that he had no recollection of registering complaints regarding his left leg in October 2002, nor did claimant recall being seen at the McCrory Family Clinic on November 13, 2001, with complaints of left knee pain. While the notes of the clinic reflects visits of the claimant for left knee pain dating back as early as October 1998, and April 1999, claimant maintains that the only thing Dr. Wilson ever did on his left side was to inject his left elbow. After having been provided an opportunity to review the clinic notes, claimant responded:

Well, I'm not going to deny that this is a fax page from McCrory, but again, I do not ever recall ever having Dr. Wilson look at my left knee for anything. (T. 32).

The testimony of the claimant reflects that he has not seen Dr. Wilson in a couple of years, however if he needed to see a general practitioner doctor for something he would probably go to the McCrory Family Clinic.

The testimony of the claimant reflects that he was last seen by a physician, Dr. Cooper, regarding his left knee approximately six (6) months ago, in 2007. The record reflects the presence of a July 19, 2007, report of Dr. Cooper. Claimant estimates that he continued to receive medical treatment relative to his left knee under the care of Dr. Cooper following the October 21, 2003, injury, every three to four months, in the form of injection, until March 2006. Claimant's testimony reflects that he was able to do his job. Claimant noted that the intensity of his pain became greater following the March 8, 2006, accident.

Claimant went to New Orleans on four (4) separate occasions providing help in the

Katrina cleanup. Each trip was of at least 14 days duration. Claimant informed Dr. Cooper of the New Orleans visits.

A review of the medical in the record reflects the earliest entry regarding a complaint of left knee pain relative to the claimant is lodged in an October 6, 1998, clinic note of the McCrory Family Clinic, which was treated with an injection in the left knee. (RX #1, p. 29). The clinic notes also reflect that the claimant was seen on April 6, 1999, for complaint of left knee pain. (RX. #1, p. 28). A June 19, 1999, entry in the records of McCrory Family Clinic regarding the claimant reflects a subjective complaint of “knee pain”. Further, the afore notes reflects an entry regarding making an appointment with an expert - Dr. Mulhollan, along with telephone numbers - - 664-6334 & 1-800-468-8611. (RX. #1, p. 27). Clinic notes of the McCrory Family Clinic reflect that the claimant was seen on June 15, 2000, and June 23, 2000, for complaints of left knee pain. (RX. #1, p. 26). On November 13, 2001, the clinic notes of the McCrory Family Clinic reflect that the claimant was seen for complaints of left knee pain. (RX. #1, p. 25). Finally, the clinic notes of the McCrory Family Clinic reflect that the claimant was seen on October 28, 2002, for his left leg with a complaint of edema. (RX. #1, p. 24). As noted above, the claimant’s employment as a patrol officer commenced in 1999 and continued through 2004.

The earliest records of the claimant’s treatment under the care of Dr. R. Edward Cooper, a Jonesboro orthopedic surgeon, commence after the October 21, 2003, compensable left knee injury when the claimant was employed by the City of Wynne. An October 29, 2003, clinic note of Dr. Cooper reflects, in pertinent part:

Mr. Glenn is a 49 year old RHD, WM who works in Wynne for the police department. Today he relates that he got out of his car real fast to chase a 20 year old. At that time he sustained a torsional

injury to his knee. He felt a pop and had immediate pain and swelling. The pain was medially. He was seen in the ER and treated with a knee immobilizer with improvement in his pain while he was in the immobilizer. When he takes it off it is very stiff and painful.

Today on physical examination he has ROM from 0-90 degrees of flexion. There is no varus instability. There is significant valgus laxity and this causes him severe pain with testing. There is marked posteromedial joint line tenderness, no lateral joint line tenderness.

* * *

IMPRESSION:

1. Left medial collateral ligament rupture.
2. Possible medial meniscal tear left knee.

PLAN:

1. We will obtain an MRI of the left knee to R/O medial meniscus tear and evaluate his medial collateral ligament rupture.
2. He was given Percocet for pain.
3. Quad strengthening exercises home program. (JX. #1, T).

An MRI of the claim's left knee disclosed a horizontal tear of the body and posterior horn of the medial meniscus; osteoarthritic change of the medial compartment manifested as regions of full thickness chondromalacia and subschondral marrow edema; acute bone contusion/microtrabecular fracture of the anterior lateral tibial plateau; and small to moderate joint effusion. (JX. #1, W).

Claimant returned to Dr. Cooper on November 3, 2003. The clinic note relative to the afore visit reflects, in pertinent part:

Mr. Glenn returns today. He relates that he has been having left medial knee pain. He returns from having his MRI of the left knee performed. It was significant for a surface reaching tear of the posterior horn of the medial meniscus. The ACL and PCL look fine. the medial collateral ligament was grossly intact although there was some increased signal intensity just prior to its insertion into the tibia indicating some injury to the ligament, but less than that required

to tear it completely. The lateral meniscus appeared to be okay. He did have moderate degenerative change of the knee joint itself.

IMPRESSION:

1. OA left knee with degenerative medial meniscal tear.(JX. #1, S).

On November 20, 2003, claimant underwent a arthroscopy of the left knee with partial medial meniscectomy and debridement at Cross Ridge Community Hospital in Wynne under the care of Dr. Cooper. The claimant's preoperative diagnoses and postoperative diagnoses of degenerative left medial meniscus tear and osteoarthritis of the left knee were the same. (JX. #1, U-V).

The claimant was seen in follow-up by Dr. Cooper to the November 20, 2003, arthroscopy, on December 4, 2003. The clinic note regarding the visit reflects, in pertinent part:

Today on physical examination his wounds are well healed. He has a mild joint effusion. He has ROM from 5 degrees of flexion to 125 degrees of flexion. No varus or valgus instability, minimal tenderness is present. The arthroscopic findings were reviewed with him and these do show grade IV chondral changes on the medial tibia condyle and grade III - IV chondral changes on the medial femoral condyle with osteophyte formation and also the pre and post meniscectomy appearance.

IMPRESSION:

1. Advanced OA of the left knee post arthroscopy with partial medial meniscectomy and debridement.

PLAN:

1. He will continue his quad strengthening exercises home program.
2. He will continue the Bextra.
3. He will return to clinic in six weeks for follow-up. At that time if he is doing well may be a final check. He may require Synvisc injections with or without steroid injections to nurse him along over time, but I think hopefully we can buy him some time for eventually he will require knee replacement. (JX. #1, Q).

Claimant was by Dr. Cooper on January 12, 2004, with complaints of increase swelling in

the left knee and occasional intermittent sharp left knee pain medially. The clinic note further recited that the claimant's left knee symptoms "stoves up" on him when he sits in his patrol car on duty. The clinic note concludes:

IMPRESSION:

1. S/P arthroscopy of the left knee with partial medial meniscectomy and debridement doing okay. He is having some pain and swelling intermittently. I think we need to give him more time before considering knee replacement. He understands this and is willing to comply.

PLAN:

1. He will continue to work on aggressive quad strengthening exercises home program.
2. He will return to clinic in four months for follow-up. At that time we will evaluate him further and if he is still having significant problems, he may benefit from knee replacement. (JX. #1, P).

When seen in follow-up by Dr. Cooper on May 6, 2004, claimant's left knee was injected with Depo-Medrol and Lidocaine. (JX. #1, O). During his July 15, 2004, visit to Dr. Cooper claimant inquired about the Synvisc injections, declined to pursue that option. Dr. Cooper noted that the claimant weighed 220 lbs, was very active and had severe bone on bone type OA which placed him in the less predictive category for success with visco-elastic injection. The July 15, 2004, clinic note regarding the claimant concluded:

3. He will return to clinic in three months for follow-up. At that time we will discuss his options further. He may wish to consider knee replacement surgery or further injection depending on how well he is doing. We can still try the visco-elastic injections if he wishes at that time. (JX #1, N).

The October 21, 2004, clinic note of Dr. Cooper relative to a visit by the claimant of the same date, reflects "it is difficult for him to get in and out of the car and do his other activities". X-rays obtained during the visit disclosed advanced OA of the left knee with complete loss of

medial joint space in the left knee. (JX #1, M). A review of the clinic notes of Dr. Cooper reflect that the claimant was seen in follow-up at three month intervals and received injections with Depo-Medrol and Lidocaine. (JX. #1,K- O).

The July 21, 2005, clinic note of Dr. Cooper relative to the claimant's visit, reflects, in pertinent part:

Mr. Glenn returns today. Today he relates that his knee is bothering him again. He has difficulty getting around on it and wishes further injection.

On physical examination today there is no change in his physical findings. He has marked medial joint line tenderness, no lateral joint line tenderness. There is significant tenderness at the patellofemoral joint with patellar compression test, overall varus alignment of the extremity and not change in ROM.

IMPRESSION:

1. Advanced OA of the left knee with complete loss of medial joint space left knee.

PLAN:

- 1.
- 2.
3. He will return to clinic in three months for follow-up. That will be the next time that he could receive further injection if he requires it. Today he relates that he thinks he is going to be ready to proceed with knee replacement at that point. We will see how he is doing at that point. (JX. #1, J).

The December 1, 2005, clinic note of Dr. Cooper relative to the claimant reflects that the claimant wanted to have the left knee replaced, however not at that point. Claimant was treated with an injection and directed to return to the clinic in three months. (JX. #1, I).

By the time of the claimant's scheduled three month follow-up visit to the clinic on March 16, 2006, he had sustained the March 8, 2006, compensable injury to the left knee arising out of

his employment with the City of Parkin. The emergency room report of Cross Ridge Community Hospital reflects, in pertinent part, under the brief history before treatment:

Pt c/o L knee pain. Pt was attempting to apprehend a suspect & twisted l knee. Does not know if he was bumped with car. No other injuries or complaints.

The report further reflects:

Pt c/o pin to L knee - pt hit by vehicle causing injury, pt walks with limp - pt wanted pain shot for pain. ERP declined til x-ray was done, informed pt. - pt was mad . . . & left . . . telling anyone. Pt left AMA.

Patient left AMA prior to getting x-ray. (RX. #1, p. 21).

The medical in the record reflects that the claimant was seen at Forrest City Medical Center on March 8, 2006, after leaving Cross Ridge Community Hospital against medical advice. The medical records relative to the claimant's March 8, 2006, visit to Forrest City Medical Center noted the claimant's injuries growing out of the accident as a right posterior knee laceration, left knee strain, and left elbow abrasion. Further the mechanics of the March 8, 2006, accident are detailed in the emergency room records of Forrest City Medical Center:

52 yo WM with c/o L knee pain. Pt involved in altercation with suspect and was possibly hit on knee by 'chief's police car. Now with pain in knee. (RX. #1, p. 15).

Claimant was given an injection Demenol and phenegren, for the left knee pain, provided prescriptions for Percorcet and Ibuprofen, underwent x-rays of the left knee and left tibia and fibula. (RX. #1, p. 15-19). The Patient Information sheet, generated during the Forrest City March 8, 2006, visit of the claimant reflects that he was directed to follow-up with Dr. Cooper on March 9, 2006. (RX. #1, p. 20).

The first medical records of Dr. Cooper relative to a visit by the claimant subsequent to the

March 8, 2006, work-related injury sustained in the employment of the City of Parkin, in a March 16, 2006, clinic note, when the claimant was seen in Wynne. The clinic reflects, in pertinent part:

03/16/06: Mr. Glenn RTC today relating that he was in a high pursuit and was taking down a suspect when a Jeep pulled up and his car skidded into his L leg, striking him and spinning him around. He has had severe pain in his L knee since that time, and it has not let up.

PHYSICAL EXAM: There is significant tenderness over the medial and lateral joint lines. He has a moderated joint effusion. He has range of motion from 15 degrees of flexion to 90 degree of flexion. There is no varus or valgus instability. Patella tracks midline.

X-RAYS: XR's demonstrate advanced OA of the L knee with complete loss of the medial joint space of the L knee.

IMPRESSION:

1. Advanced OA of the L knee with complete loss of medial joint space L knee.

PLAN:

1. The risks and benefits of minimally invasive knee replacement surgery were discussed with him, including informed consent obtained and a complete H&P performed. We will proceed with this, at his convenience. (JX. #1, H).

The claimant was next seen by Dr. Cooper on April 20, 2006. The clinic note relative to the April 20, 2006, visit reflects, in pertinent part:

Mr Glenn RTC today relating that he continues to have pain in his L knee. He wishes to have this replaced, but Workman's Comp is denying his claim. He knows that the accident made it worse, but he is not sure that he wants to pursue this in a legal situation. Today, he relates that he has been working hard, and thinks he can save the money up and do it that way.

* * *

PLANS:

1. The L knee was sterilely prepped and injected with Depo-Medrol and lidocaine.

2. We will give him Percocet, #30, for pain, as he is going down to Louisiana and it will kind of out our jurisdiction for a while.
3. He will RTC in 3 months for f/u. That will be the next time that he can receive further injection, if he requires it. (JX. #1, F).

The medical records reflect that the claimant received another injection in the left knee upon his return visit to Dr. Cooper on September 7, 2006, and a three month return appointment. (JX #1, E).

On December 7, 2006, claimant was again seen by Dr. Cooper. The clinic note relative to the afore visit reflects, in pertinent part:

Mr. Glenn RTC today. He relates that eh has recently been diagnosed with cardiomyopathy and had ejection fraction of 35%. He has had a steady downward spiral since injuring his L knee back in 2003. At that time, he had tear of his medial meniscus which was a work related injury and exacerbation of his osteoarthritis. He has continued to battle this with occasional steroid injections and has been able to remain gainfully employed but it has gotten to the point where he has a very difficult time performing both vocational and avocational type activities.

PHYSICAL EXAMINATION: No change in physical findings today.

IMPRESSION:

1. Advanced OA of the L knee with complete loss of medial joint space L knee.

PLAN:

1. I discussed the options with him. What he really needs is knee replacement surgery. This is the only procedure that would re-establish him back to near his previous level of functioning. Today, we discussed the option of steroid injection. It gives him temporary relief. We also discussed his original injury. I informed him that he did have pre-existing arthritis prior to his initial injury, however, after the index injury, he has had exacerbation of his osteoarthritis to the point where he has had a steady decline in his ability to function as a law enforcement officer. There has certainly been an exacerbation of his condition related to the injury. He is going to discuss this with workman's comp to see if they will cover his surgical intervention to get him back to the level of functioning that he had prior to his injury.

I think this would be reasonable. He will let us know what their verdict is. (JX #1, C).

The medical records reflect that the claimant received an injection of Depo-Medrol and Lidocaine during a visit of April 5, 2007, to Dr. Cooper. (JX. #1, B). The claimant was last seen by Dr. Cooper on July 19, 2007. The clinic note relative to the afore visit reflects, in pertinent part:

Mr. Glenn RTC today. He relates that he is having bilateral knee pain. It is still much worse on the L than on the R, but is bothering him quite a bit. He is getting ready do some PT for his job and wishes to get some relief.

PHYSICAL EXAMINATION: Today, there is no change in his physical findings.

IMPRESSION:

1. Advanced OA of the L knee.
2. OA R knee.

PLAN:

1. The knees were sterilely prepped and injected with Depo-Medrol and Lidocaine.
2. Quad exercises home program.
3. He will RTC in three months for f/u. That will be the next time he can receive further injection if he requires it. (JX. #1, A).

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

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.
2. At all times pertinent, to include October 21, 2003, the employee-employer relationship existed between the claimant and respondent #2 when the claimant sustained a

compensable injury to his left knee.

3. At all times pertinent, to include March 8, 2006, the employee-employer relationship existed between the claimant and respondent #1 when the claimant sustained an injury to his left knee.

4. On March 8, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$276.00/\$207.00, for temporary total/permanent partial disability.

5. The evidence preponderates that the claimant sustained specific incident injuries to his left knee on October 21, 2003, and March 8, 2006, which now require medical treatment in the form of a total knee replacement which is reasonably necessary in connection with the compensable injuries.

6. The respondents have controverted the claimant's entitlement to additional medical treatment in the form of a total left knee replacement surgery, along with corresponding temporary total disability benefits in connection with the procedure.

CONCLUSION

Neither the compensability of the claimant's October 21, 2003, left knee injury in the employment of the City of Wynne or March 8, 2006, left knee injury in the employment of the City of Parkin is disputed. Claimant maintains that he is need of a total knee replacement for the left knee in the treatment of the injuries. Respondent asserts that the claimant sustained a temporary aggravation of his pre-existing knee condition and that all appropriated benefits have been paid. The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

While the evidence clearly discloses that the claimant experienced complaints relative to his left knee which required medical treatment prior to his 1999 employment by the City of Wynne it is equally clear that he sustained an injury to his left knee within the course and scope of his employment on October 21, 2003, to the left knee. Indeed, as reflected in the medical above, it was only after the October 21, 2003, compensable injury that indication of a total left knee replacement surgery appeared in the medical records. While the claimant's employment with the City of Wynne ceased in 2004, he continued to receive medical treatment for the October 21, 2003, compensable left knee injury on a regular basis.

When the claimant sustained the March 8, 2006, compensable injury to his left knee within the course and scope of his employment with the City of Parkin he had last been seen by Dr. Cooper, his treating orthopedic surgeon, on December 1, 2005, at this time he had expressed the desire to have the total knee replacement surgery, not at that point. Although he had been seen by other medical providers in connection with the March 8, 2006, compensable injuries, claimant was first seen by Dr. Cooper on March 16, 2006. The credible evidence in the record reflects that while the nature and frequency of the claimant's medical treatment under the care of Dr. Cooper remained the same following the March 8, 2006, injury to the left knee, his intensity of his symptoms increased as did his physical limitations involving the extremity.

Ark. Code Ann. §11-9-508 (a) mandates that the employer provide such medical services as may be reasonably necessary in connection with the employee's injury. Whether a medical procedure or device is reasonable and necessary is a question of fact to be decided by the Commission. *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

The evidence clearly discloses that the claimant experienced complaints with his left knee

prior to the October 21, 2003, compensable injury sustained in the employment of the City of Wynne. While there was an indication/recommendation of an orthopedic referral for the left knee complaint on June 19, 1999, there is not evidence in the record to reflect that the claimant was seen by an orthopedic physician relative to his left knee prior to the October 29, 2003, visit by Dr. Cooper, which was subsequent to the accident.

In workers' compensation law, the employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 64 (1990). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

In the instant claims, there is no dispute that the claimant sustained compensable left knee injuries in the employment of the City of Wynne and the City of Parkin. The medical evidence establishes the claimant's current need for knee-replacement surgery. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004). The evidence preponderates that both injuries played equal roles in the claimant's present medical status relative to the need for the total knee replacement. Certainly the option for the procedure had been discussed by the claimant with his treating physician as a result of the symptoms following the October 21, 2003, injury. The need for the procedure became a necessity, given the claimant's symptoms and physical limitations, following the March 8, 2006, compensable injury. Respondents have controverted the claimant's entitlement to the left knee replacement surgery in the treatment of the compensable injuries, as well as the resulting temporary total disability growing out of the procedure.

AWARD

Respondents are herein ordered and directed to pay all reasonably necessary medical treatment in connection with the compensable left knee injuries of October 21, 2003, and March 8, 2006, to include the recommended total knee replacement surgery.

Respondents are further ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$276.00, during the claimant healing period while off work and convalescing following the total knee replacement surgery.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity portion of this award, 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