

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F705858**

**SATAINA GOODWIN, EMPLOYEE**

**CLAIMANT**

**GEORGIA-PACIFIC CORPORATION,  
SELF-INSURED EMPLOYER**

**RESPONDENT**

**SEDGWICK CLAIMS MANAGEMENT SERVICES (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MARCH 11, 2008**

Hearing before Administrative Law Judge Barbara W. Webb on December 13, 2007, in Monticello, Drew County, Arkansas.

Claimant appeared pro se.

Respondents represented by Ms. Susan M. Fowler, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on December 13, 2007, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on October 16, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No.1 to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on May 8 and May 9, 2006, when claimant sustained a compensable injury.

3. The claimant earned an average weekly wage of \$512.00, resulting in a temporary total disability rate of \$341.00 and a permanent partial disability rate of \$256.00, if disability benefits are awarded.

By agreement of the parties, the issues to be determined at the hearing are as follows:

1. Claimant's entitlement to temporary total disability benefits.
2. Claimant's entitlement to additional medical benefits.

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### **CONTENTIONS**

The claimant contends she sustained a compensable injury on May 9, 2006, and is entitled to additional medical benefits and temporary total disability benefits from May 7, 2007, to a date yet to be determined.

The respondents contend that they accepted an injury to claimant's right knee in the form of a bruise on May 9, 2006. All appropriate benefits for the accepted injury have been paid with the last doctor's visit provided by respondents taking place on September 12, 2006: that claimant did not seek medical treatment again for her right knee until May 15, 2007, and that said treatment for her right knee and related missed time from work, is wholly unrelated to her compensable May 9, 2006, injury. In the alternative, should it be determined that the claimant is entitled to additional medical treatment, respondents contend that the claimant had another fall, severely twisting her right knee on or about August 1, 2007, and that this incident is an independent intervening cause/accident which is the cause of her

need for treatment after that date and which should preclude the Claimant from receiving additional medical treatment or other benefits after this date.

The record consists of a one volume transcript of the December 13, 2007, hearing, consisting of the testimony of the claimant, Sataina Goodwin, and all documentary evidence consisting of Commission's Exhibit 1 (Pre-hearing Order); Claimant's Exhibit 1 (Questionnaire and Medical Reports); Claimant's Exhibit 2 (Medical Reports); Respondents' Exhibit No. 1 (Medical Records with Index); Respondents' Exhibit No. 2 (Personnel Records). In addition, I have blue-backed a post-hearing brief filed by the respondents on December 20, 2007, and a letter from the claimant filed December 19, 2007, which is incorporated and made a part of the hearing record.

### **FACTUAL BACKGROUND**

The claimant, Sataina Goodwin, is 34 years of age (b.d. 06/26/73). She is married and has two children. She lives in Crossett, Arkansas. She graduated high school. In May of 2007, she completed a six-week vo-tech CNA program. She is a licensed CNA. Her work history includes working as a cook at fast food restaurants and shift work at Georgia-Pacific. She began working for Georgia-Pacific as a utility worker making plywood in 1998. She explained that her job duties included breaking out the feeders and the correlators on the glue lines and cleaning up. She had no prior work-related accidents, but had injured her lower back in several car accidents in 2000, 2004, and 2006. She testified that on May 9, 2006, she slipped and fell on her right knee while getting down off the feeder

stand. She immediately reported the incident to her supervisor and returned to the line to work. Her knee began to burn, ache, and swell. She was eventually taken to the safety room and treated with Tylenol and an ice pack. She did not seek medical attention and went home at the end of her shift. She returned to work on her next scheduled shift but was required to sit in the safety room with Tylenol and an ice pack for the next four weeks under the treatment of the company doctor, Dr. Gresham. The company doctor released her to go back to work but due to continuing issues, she continued to treat with Dr. Gresham. She underwent an MRI on June 13, 2006. In July of 2006, she sought treatment with her primary doctor, Dr. Thompson, due to a car accident. She returned to Dr. Gresham in September of 2006 due to continued pain and swelling in her right knee. Her next visit to the doctor was in May of 2007. She was referred to Dr. Bryant. Dr. Bryant performed surgery on her knee on May 30, 2007. She explained she was still in therapy as of the date of the hearing. She testified that she was still taking pain medication and remained in a great deal of pain. She testified that her surgery was successful but had to undergo a second surgery on her right knee after she slipped and fell at home in August of 2007, even though she was wearing her knee brace. She notice swelling in her ankle and her knee after the fall. She explained that she lost her balance when her knee gave out due to the weakness in her knee. She explained that she began missing work in May of 2007 and had not been able to return to work. She missed approximately two weeks of work in August of 2006 for her low back after the car accident. She collected short term disability for time she missed

work due to the surgeries. She is still employed by Georgia Pacific but was taken off the payroll as of November 30, 2007.

FMLA records reflect that the claimant applied for FMLA after treatment by Dr. Tice for low back pain on May 11, 2006. There is no mention of problems with her right knee even though the application was completed only two days following the May 9, 2006 incident at work.

Medical records reflect that the claimant was first treated by Dr. Gresham on June 12, 2006. He noted tenderness but no effusion, swelling, or bruising. The knee was described as stable and the x-rays were normal. She underwent an MRI on June 13, 2006, which revealed: (1) Tiny joint effusion with areas of marrow edema in the medial aspect of the lateral femoral condyle and midportion of the medial femoral condyle. (2) Medial meniscal degeneration with early medial compartment degenerative arthritic involvement. No tears were identified. On her two-week follow-up appointment, Dr. Gresham noted that the MRI showed bruising only. On July 7, 2006 and July 10, 2006, the claimant was seen by her primary care physician, Dr. Barry Thompson for low abdominal pain. Notes from these visits do not reflect any mention of the claimant's right knee. On September 12, 2006, the claimant was seen by Dr. Gresham. His clinic notes reflect that there was no effusion, swelling, or bruising of the right knee. He opined that the "DJD on 6-06 MRI obviously not due to OI".

The claimant testified that she called her employer to report that she would not be at work on May 7, 2007 and May 8, 2007. She acknowledged that she was

placed on suspension on May 11, 2007, and was likely to be terminated due to excessive absenteeism. Georgia Pacific's Absentee Report of May 7, 2007, reflects that the claimant reported an accident at home. She returned to Dr. Gresham on May 15, 2007. Clinic notes reflect that he observed swelling and effusion and referred the claimant to Dr. D'Orsay Bryant, an orthopedic surgeon. Dr. Bryant performed surgery on the claimant's right knee on May 30, 2007. His report shows a post-operative diagnosis of "right knee patellofemoral chondrosis with severe lateral meniscal tear." Medical records reflect that the claimant was improving through August 1, 2007, and Dr. Bryant planned to return the claimant to work on August 13, 2007. On August 9, 2007, she returned to Dr. Bryant reporting that she had slipped and fallen one week earlier "severely twisting her right knee". She underwent a second surgery on August 22, 2007.

## **DISCUSSION**

### **Additional Medical Treatment**

The respondents have accepted the right knee injury as compensable and paid appropriate medical expenses through September 12, 2006. Respondents contend that medical treatment beginning May 15, 2007, and continuing to present is unrelated to the May 9, 2006 compensable incident.

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy 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). Respondents are responsible only for medical services which are causally related to the compensable injury.

### **Causation**

In a workers' compensation case, a claimant must prove a causal connection between the work-related accident and the disabling injury. Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact for the Commission to determine. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998).

Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B)(Repl. 1996). The Arkansas Court of Appeals has held:

the plethora of possible causes for work-related injuries includes many that can be established by a common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident - but not in every case. We find the Court of Appeal's reasoning in *Millican* and *Tilley* persuasive. We therefore adopt the holding in *Millican* that objective medical evidence is necessary to establish the existence and extent of an injury, but is not essential to establish the causal relationship between the injury and the work-related incident (emphasis added).

Freeman v. Con-Agra Frozen Foods, 70 Ark. App. 306, 27 S.W.3d 762 (2000), quoting Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

See Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997) and Aeroquip, Inc. v. Tilley, 59 Ark. App.163, 954 S.W.2d 305 (1997).

Based on this reasoning, Freeman, summed up the current state of the law as such:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between the injury and the claimant's employment, but if an unnecessary medical opinion is offered on that issue, the opinion must be stated with a reasonable degree of medical certainty.

Freeman, supra, citing Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

The law is clear that medical opinions based upon "could", "may", "possibly", and "can" lack the definitiveness required by Ark. Code Ann. §11-9-102(16)(B)(Supp.1999) which requires that medical opinions be stated within a reasonable degree of medical certainty. Scott v. Middleton Drywall, 2005 AWCC 22 (Feb. 9, 1005) ("probably did" found insufficient to prove causation); Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000) (overruling prior Court of Appeals decision and holding that "could" was insufficient to satisfy standard ); Crudup v. Regal Ware, Inc. , 341 Ark. 804, 20 S.W.3d 760 (2001) ("theoretical possibility" did not meet standard of proof); Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001) (to pass muster, opinion must be more than speculation and go beyond possibilities).

In the instant case, the claimant testified and medical records support that she did not seek medical treatment for the right knee injury until June 12, 2006, over

a month after the work-related incident. However, two days after the work-related fall, she began treating with her primary care physician for low back problems that were not attributable to the work accident. Although she underwent an MRI of the right knee on June 13, 2006, which identified joint effusion possible due to a meniscal cyst with no definitive tear, she did not appear for her follow-up appointment with Dr. Gresham and continued to work at full duty. She returned to Dr. Gresham on September 12, 2006. On September 15, 2006, Dr. Gresham noted that her right knee pain related to DJD which was "obviously not" from the on-the-job injury. She continued to work full duty through May 6, 2007. On May 7, 2007, she reported an accident at home. She returned to Dr. Gresham on May 15, 2007, and was referred to Dr. Bryant. On May 30, 2007, she underwent arthroscopic right knee surgery due to a preoperative diagnosis of right knee patellofemoral chondrosis with severe lateral meniscus tear. This tear was not present in the June 13, 2006 MRI. She reported another injury to her knee on August 9, 2007, prior to returning to work after the first surgery. She underwent a second surgery on August 22, 2007.

The Arkansas courts have frequently discussed the distinction between a recurrence and an aggravation of a pre-existing injury. When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer

remains liable. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from the previous injury. Pinkston v. General Tire & Rubber Co., 30 Ark. App. 46, 782 S.W.2d 375 (1990). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Williams v. L & W Janitorial, Inc., 85 Ark. App. 1 145 S.W.3d 383 (2004); Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a preexisting non-compensable condition by a compensable injury is, itself, compensable. *Id.*

In Davis v. Helena Chemical Co., claimant suffered from a pre-existing lumbar degenerative condition before sustaining a compensable injury. Full Commission Opinion, filed August 3, 1999 (D406121). The Full Commission affirmed an administrative law judge's finding that claimant was entitled to additional medical treatment, stating:

The respondents' and the dissent's central argument in this case is that the treatment the claimant is presently receiving is because of an ongoing degenerative condition which would be occurring whether or not the claimant suffered an injury in 1984. However, this argument overlooks the fact that the claimant's previously asymptomatic

degenerative process physically progressed and became symptomatic because of his 1984 compensable injury . . . the compensable injury, not some speculative event, is what resulted in the claimant's present condition.

Id.

The Full Commission later upheld a finding of compensability where symptoms of claimant's pre-existing condition were asymptomatic for five years prior to the compensable event. Jerry Hamblton v. Guy King & Sons, Inc. & Bituminous Casualty Corp., Full Commission Opinion, filed February 22, 2001 (E904812). The Commission held that a preponderance of the evidence showed that claimant's symptoms were the result of his compensable injury, despite the fact that claimant had a pre-existing ongoing degenerative process. Id. at 19. When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury. Jeter v. B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). It is the Commission's duty to determine if a causal connection exists between the primary injury and any additional injuries. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999). While medical evidence is not required to show a causal connection, claimant must show proof by a preponderance of the evidence. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that

the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962). If the claimant's disability arises soon after the accident and is logically attributable to it, with nothing to suggest any other explanation for the employee's condition, there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

Following the May 9, 2006 incident, claimant presented for examination and treatment to Dr. Barry Thompson on numerous dates between May and July of 2006. Each report reflects the complaints of the claimant and assessment of claimant's medical condition at each visit. There is simply no mention of complaints or medical findings in connection with her right knee injury in any of the related medical notes or reports. It is noteworthy that medical records reflect prior medical treatment in 2005 for complaints of right knee pain. Following the specific incident of May 9, 2006, the medical records reflect that claimant did not complain of continued problems in her right knee as a result of the work-related injury after

September of 2006, until May of 2007, some twelve months after the incident occurred.

After review and consideration of the testimony and medical records, I find that the preponderance of the evidence fails to show that claimant's need for medical treatment to her right knee after September of 2006 is causally related to her work-related accident.

#### **ADDITIONAL TEMPORARY TOTAL DISABILITY**

Claimant is contending that she is entitled to additional temporary total disability benefits from May 30, 2007, to a date yet to be determined. The claimant is entitled to temporary total benefits if she can satisfy a two-prong test: (1) claimant must be within her healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994). In the instant case, the claimant continued to work from the date of her work-related accident until May 6, 2007, with the exception of work missed due to unrelated medical problems. Her disability began after she reported an accident at home and when she underwent her first surgery on May 30, 2007. It is clear from the evidence that her disability was not related to the May 9, 2006 accident. Moreover, the claimant testified and the medical records support that she had an independent, intervening non-work related accident in August of 2007, which was the cause of

her need for the second surgery and associated failure to return to work after August 9, 2007, for which the respondents are not responsible. Therefore, I find that the claimant is not entitled to temporary total disability benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on May 8 and May 9, 2006, when claimant sustained a compensable injury to her right knee.
3. The claimant was earning an average weekly wage of \$512.00, sufficient to entitle her to a compensation rate for temporary total disability of \$341.00 and a permanent partial disability rate of \$256.00, if awarded.
4. Respondents have paid medical benefits through September 12, 2006. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical benefits related to her compensable injury to her right knee.
5. Claimant has failed to prove by a preponderance of the evidence that her need for additional medical treatment from Dr. Bryant, including the two surgeries performed on May 30, 2007, and August 22, 2007, is reasonable and necessary and causally related to her compensable work-related injury in May of 2006.

6. The preponderance of the evidence demonstrates that the claimant had an independent and intervening non-work related accident in August of 2007 which was the cause for her need for medical treatment to her knee and failure to return to work after August 9, 2007.
7. Claimant has not proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from May 30, 2007, until a date yet to be determined since she continued to work after the compensable injury until she was suspended for unrelated reasons.

**ORDER**

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

**IT IS SO ORDERED.**

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**BARBARA WEBB**  
Administrative Law Judge