

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F704899**

**TONI R. GREER, EMPLOYEE**

**CLAIMANT**

**OZARK OPPORTUNITIES., EMPLOYER**

**RESPONDENT**

**GUARANTY INSURANCE COMPANY, CARRIER**

**RESPONDENT**

**OPINION FILED SEPTEMBER 23, 2008**

Hearing before Administrative Law Judge O. Milton Fine II on June 25, 2008, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. John D. Davis, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 25, 2008, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on March 10, 2008. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. They are the following four, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed on May 2, 2007 and at all relevant times.
3. This claim has been controverted in its entirety.
4. Claimant's average weekly wage was \$223.08.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. Claimant withdrew the issue concerning the constitutionality of the Arkansas Workers' Compensation Act, and specified that the issues regarding Claimant's entitlement to temporary total disability benefits, permanent total disability benefits, and permanent partial disability benefits were being reserved. The following issues were litigated:

1. Whether Claimant sustained a compensable injury to her left knee on or about May 2, 2007.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.

### Contentions

The respective contentions of the parties are as follows:

#### Claimant:

1. Claimant contends that she sustained a compensable injury to her left knee while performing employment services for the Respondent. Claimant contends that her injury to her left knee is supported by objective findings and that her injury meets the criteria of a compensable injury as outlined in Ark. Code Ann. § 11-9-102(16)(A)(i).

2. Claimant contends that since her injury is compensable, that she is entitled to all related benefits pursuant to Arkansas statute.

Respondents:

1. Respondents contend that Claimant did not sustain a compensable injury to her left knee on or about May 2, 2007.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The testimony of Jane Bueg concerning her alleged May 3, 2007 telephone conversation with Claimant will be admitted into evidence and be given due weight.
4. Claimant has proven by a preponderance of the evidence that she sustained a compensable injury to left knee on May 2, 2007.
5. Claimant has proven by a preponderance of the evidence that the care she received on her left knee as set forth in Claimant's Exhibit 1 was reasonable and necessary.

6. Claimant has not proven by a preponderance of the evidence that she is entitled to the surgery recommended by Dr. Thomas Knox.

### **PRELIMINARY RULINGS**

#### Admission of Proffered Testimony of Jane Bueg

Bueg was a witness called by Respondents. Bueg testified that she had a telephone conversation with Claimant on May 3, 2007 around 9:30. Prior to objection, Bueg testified that she was "certain" that the call took place on the morning of May 3. Respondents' counsel asked her if she made some notes from the call, and Bueg answered that she had. He also asked her if she went "back to confirm that that was the date and time that the call came in," and Bueg again answered in the affirmative.

Before she could testify as to the substance of the call, Claimant's counsel objected on the grounds that Respondents admitted in their answer to Claimant's Request to Admit No. 4 (these discovery responses are part of Claimant's Exhibit 4) that Respondent Ozark Opportunities "nor [its] attorneys, representatives, employees or agents acting on [its] behalf obtained or possess statements in any form from any person . . . ." The wording of the request is such (due to the absence of the word "neither" from the beginning of the request) that it appears that an admission could constitute an admission that Respondents actually had such a statement; but the wording of Interrogatory No. 9 confirms that only if Respondents did not unqualifiedly admit to the above were they to answer questions about the nature of the "statement." Regardless, Respondents responded that this interrogatory was not applicable. Nothing from the evidence before me indicates that Claimant deemed either or both responses unsatisfactory and followed up further.

Arkansas Code Annotated § 11-9-705(a)(1) (Repl. 2002) provides:

In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

The Commission has a "great deal of latitude in evidentiary matters." *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001).

Following the objection, Respondents argued that Claimant's counsel opened the door to this testimony by asking Claimant about Bueg. When it was pointed out that that question actually came from Respondents, Respondents' counsel then asserted that any objection was waived when Claimant's did not object to the testimony from Claimant. I do not find this persuasive. However, I do find persuasive Respondents' argument that these notes from Bueg do not constitute a "statement," and thus did not fall under the interrogatory or admission request.

Moreover, nothing in the record before me indicates that the notes impacted Bueg's testimony. Nothing shows that she testified from the notes, or even brought them to the hearing. From Bueg's testimony, she used them only to confirm the alleged date and time of Claimant's call. But it appears that she had independent recollection of this matter anyway. I afforded Claimant's counsel the opportunity to cross-examine the witness if for no other purpose than to bolster his objection, with the proviso that if Bueg's proffered testimony on direct was excluded, the cross-examination would be as well. He declined to question her. For the above reasons, and because admission of the testimony will help to "best ascertain the rights of the parties, it shall be admitted into evidence and be given due weight.

**CASE IN CHIEF**Summary of Evidence

\_\_\_\_\_The witnesses at the hearing were, in the order they were called to the stand: Donna Ellis, Sandra Greer, Audra McLester, Martha Teegarden, Claimant, James Greer, and Jane Bueg.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, a compilation of Claimant's medical records, consisting of one index page and 17 numbered pages thereafter; Claimant's Exhibit 2, a letter from Claimant's counsel to the Commission dated February 2, 2008, consisting of two pages; Claimant's Exhibit 3, the transcript of the deposition of Claimant taken February 7, 2008, consisting of 50 transcribed pages and a one-page exhibit; Claimant's Exhibit 4, Respondents' discovery responses, consisting of 26 numbered pages; and Respondents' Exhibit 1, non-medical exhibits including a Form AR-N dated May 4, 2007, letters from Claimant's counsel dated August 13, 2007 and February 7, 2008, a Form AR-C dated August 13, 2007, and an accident report dated May 2, 2007, consisting of eight numbered pages.

Testimony-Hearing

Donna Ellis. Called by Claimant, Ellis testified that she has known Claimant for over 12 years, and that Claimant was an aide in her granddaughter's Headstart class. She had been around Claimant prior to May 2, 2007. She stated that before that date, she never saw Claimant have any trouble with her knees or complain about them. However, two or three days after the alleged incident, she went to see Claimant and she told Ellis that she

had been injured while aiding a boy who had fallen. Ellis testified that the stairs where the incident occurred are very steep.

She stated that Claimant's knee has not improved. Ellis has taken her to the Mountain Home Christian Clinic for therapy, and has helped her around the house because Claimant is unable to do so due to pain or the effect of pain medication. She has observed swelling in Claimant's knee, and described it as being "like a small watermelon." Because of her condition, Claimant uses a wheelchair and crutches to get around.

Under questioning from Respondents, Ellis stated that she knew of no other event that would have caused Claimant's knee injury. Claimant related to her that the incident occurred when the boy in question fell on the stairs going to or from breakfast or lunch at the school; Claimant went to help him and felt something pop in the process.

Sandra Greer. Called by Claimant, Greer's testimony was that she is Claimant's sister-in-law and lives near her. She stated that prior to the alleged incident, Claimant did not have any knee trouble, and enjoyed her job as an aide. Claimant told her that on May 2, 2007, she ran down the stairs to help a little boy who had fallen and struck his head, and her knee buckled. Greer saw her the day of the incident, and had to help her into bed and cook dinner for the family because the knee was immobile and very painful. The next day, Claimant began to experience even more pain. Greer picked her up from her mother-in-law's business after Claimant had been to work. Her testimony was that Claimant could not move and cried from pain.

As for her current condition, Greer stated that Claimant can only stand for 20 to 30 minutes and that Greer has to help her with chores around the house. She wears a brace and elevates her leg all of the time.

Under cross-examination, Greer testified that on the evening of the injury, Claimant's knee was swollen to the size of a baseball. When she picked her up the next day, the time was between 12:30 and 2:00 p.m. She stated that Claimant was shaking and crying.

When questioned by me, Greer testified that the size of Claimant's left knee varies. At times, it swells to twice the size of the right one.

Audra McLester. Called by Claimant, McLester stated that she knows Claimant because her son attended the school where Claimant was employed. She was unaware of Claimant having any knee problems prior to May 2, 2007. McLester testified on the date of the incident, she saw the boy in question and he had a knot on his head. Claimant told her that she had fallen and hurt her knee while retrieving a washcloth for him. She witnessed Claimant with a pronounced limp.

The day after the incident, McLester watched Claimant's children because Claimant was sleeping. She stated that Claimant cried at times and appeared to be in pain. Her knee was swollen. McLester testified that Claimant never told her of any other incident causing the knee injury. She appeared to be less mobile the day after the incident.

Martha Teegarden. Called by Claimant, Teegarden testified that she is the center director and teacher at Respondent Ozark Opportunities in Norfolk. She has worked there for 40 years. Her testimony was that Claimant was a good aide, and that she did not have a pre-existing problem with the knee in question. She had previously injured the other one, however.

As for the incident at issue, Teegarden recalled that the injured boy, who was in the class with her and Claimant, had a bump of significant size on his head. The wound did not

bleed. At the time of the fall, the class was descending the 13 steps down the hillside to the lunchroom. While she recalled Claimant helping her attend to the boy, Teegarden stated that Claimant did not tell her at the time that she had injured her knee. But while she was not positive, Teegarden stated that she believed that Claimant told her of hurting her knee earlier that morning, while the students were having breakfast in the lunchroom. Later, she testified that she was unsure whether the conversation took place at breakfast or at lunch. Teegarden told her that she could report the injury to the Harrison office when they returned up the hill, but Claimant replied that she thought that she could make it. She worked the rest of the day. The next morning, Claimant came in and told Teegarden that her knee was throbbing and that she did not think she could work. At Teegarden's suggestion, Claimant called the Harrison office, and she was instructed to do to the doctor. Claimant left for the appointment at 11:30 that morning.

Teegarden stated that because of her memory of the incident, she could not state whether Claimant hurt her knee going to the aid of the fallen boy. She was unaware of Claimant sustaining another injury the next day.

Under questioning from Respondents, Teegarden repeated that she did not recall Claimant telling her that she had hurt her knee at the time that she was attending to the injured boy. She remembered Claimant retrieving a washcloth to use on the boy, and that she was limping that afternoon. Teegarden stated that she thought that Claimant told her about her knee at breakfast on May 2 because of the activity the class was engaged in at the time she told Claimant to contact Harrison. But she was fairly certain that Claimant never told her that she was injured while coming to help the child, and that the child fell on the way to lunch. Shown page 7 of Respondents' Exhibit 1, she identified it as the accident

report on the child. The report reflects that the boy's parents were contacted at 12:03 p.m. Teegarden did not notice anything about Claimant as the two were attending to the boy that led her to believe that Claimant had been injured.

When questioned by me, Teegarden stated that the boy fell at noon.

Toni Greer. Claimant testified that she is 30 years old and 29 at the time of the alleged incident. She described the incident as follows:

On May the 2<sup>nd</sup>, as we were going to break-, or to lunch, we were going down the stairs. We observed that some, you know, of the children were hopping and we said, don't hop. And as soon as we said that, the child fell . . . As I went to him, Ms. Teegarden was standing there with a paper towel to his forehead. I rushed back up the stairs, got a wash rag, and as I was coming back down, as I reached that last step where they were at, I felt a pop in my leg, in my knee. And it kinda buckled and I grabbed the railing. And I said, oh, I hurt my knee, but I was handing Martha the wash rag at the same time. Afterwards, we went ahead and took the children on down. I come back up, called the parents, told—if my memory is correct, I took the phone down to the cafeteria with me because I was unable to get a hold of the parents immediately.

She stated that her knee began throbbing immediately. Over the rest of the day, it worsened. According to Claimant, she filled out the accident report concerning the boy's fall. She stated that the report accurately describes the incident. Claimant did not recall whether Teegarden told her that day to contact Harrison. Her testimony was that during lunch that day, her knee began to swell and felt "tight." At that time, she again told Teegarden of the injury. After the class went back up the hill to the classroom for nap time, Claimant sat at the art table and propped up the foot on her injured leg. She began limping that day. Claimant drove herself home at the end of the day. At the time Greer arrived at the house, she had iced her knee. Greer helped her to bed, re-iced the knee, and

prepared supper. Claimant stated that she took Tylenol that evening, and had trouble sleeping.

She awoke the next morning and went back to the school. Claimant stated that the knee was still bothering her. She was unsure if she told Teegarden about her knee prior to the class going to breakfast, but was sure she told her at breakfast. Claimant did not recall if Teegarden told her to call the Harrison office.

Her testimony was that she had no pre-existing problems with her left knee, but that it has troubled her since the incident. She rated her pain as 5/10 to 6/10 on a typical day. However, if she uses the knee more extensively, the pain worsens. She has to go to the free Christian clinic in Mountain Home to obtain pain medication. Claimant stated that she wishes to undergo the surgery recommended by Dr. Thomas Knox.

When questioned by Respondents, Claimant testified that when she went to the aid of the fallen child, she "was moving at a faster pace that [she] would normally go down the stairs." However, at her deposition she could not recall at what pace she was moving.

She stated that the Form AR-C prepared by her attorney and which she signed on August 13, 2007, gives May 2, 2007 as the only date of injury. As for the accident report concerning the boy's fall, Claimant stated that she did not mention her own injury on it because that was not the form to do so. But she did admit that if she was hurt as she testified, it would have made sense for her to report that she was injured while coming to the aid of the boy. She tried to explain that she may at times have conveyed inaccurate information because of the pain she was suffering. Shown the Form AR-N in Respondents' Exhibit 1, Claimant testified that she filled it out. When asked to explain why the form gives the date of accident as May 4, 2007, Claimant stated that she "was hurting

very, very bad.” She admitted that other information on the form is correct. Claimant also admitted that the form does not mention that she was helping a fallen child. Questioned about the form listing 8:00 as the time of the accident, Claimant replied, “Sir, this was wrote [sic] on my second accident.”

Claimant first treated with her own physician at the Calico Clinic on May 3, 2007. Asked why the note does not mention an incident on May 2, 2007, Claimant stated that she did convey this information. She admitted that she hurt her right knee at home while walking down steps, and paid for her treatment out-of-pocket.

Under questioning from me, Claimant stated that there are 18 steps from the classroom down to the lunchroom. They are wide steps and require two steps to cover each of them. She guessed that they were two feet wide, and six to eight inches or more in height. Claimant stated that the boy fell about half-way down the flight, and she was placing her left foot on that step where the boy and Teegarden were, bringing a washcloth to him, when she felt a pop in her left knee and felt it buckle, causing her to grab the rail on the left side with her left hand. At this point, her right foot was behind her.

As for the Form AR-N discussed above, Claimant stated that it describes a second injury that occurred on May 3, 2007 at 8:00 a.m., as the class was descending the stairs to go to breakfast. Claimant testified that her knee buckled when she took that last step and she stumbled. Asked why the report lists the date of injury as May 4, 2007, she speculated that she used this date because that was when it would be received. Later, she surmised that she was simply mistaken about the date.

Under further questioning from her attorney, Claimant stated that counsel wrote the letter to the Commission in Claimant's Exhibit 2 because the May 3 incident was not

originally mentioned. As for the May 2 incident, she testified that she had the washcloth in her right hand and twisted when she handed it to Teegarden. On May 3, her knee was hurting, and she was using the rail to descend the steps. Her testimony was that when she hit the bottom step, her knee popped and buckled as it did the day before. The pain increased and changed, with sharp pain starting going through the side and back of the knee. She testified that she could not recall when she contacted the Harrison office if someone instructed her how to fill out the Form AR-N. Claimant was pretty sure that she told them of both the May 2 and May 3 incidents.

Questioned further by Respondents, Claimant's only explanation for not mentioning the May 2 incident involving the child on the Form AR-N was that she filled it out on May 3, after the second incident occurred. She admitted that the date of the incident and the date of her signature, May 4, 2007, are both incorrect. Claimant recalled that when she contacted the Harrison office on May 3, she did not speak with Jane Bueg; she was told that Bueg was on vacation.

James Greer. Called by Respondents, Greer testified that he has been married to Claimant for 12 years. He stated that she had no problems with her left knee prior to May 2007. On May 2, 2007, he came home to find Claimant sitting with an ice pack on her knee. She told him that it was painful and that she hurt it at work. He first testified that he cooked dinner for the family that night, but then changed his testimony under prompting from Claimant's counsel. He left early the next morning. When he returned home that night, Claimant was again on the couch with a knee swollen to twice the size of the other. He stated that he did not recall much of what Claimant told him occurred that day.

Under questioning from Respondents, Greer stated that his wife sprained her right knee before while stepping off their front porch.

Jane Bueg. Called by Respondents, Bueg testified that she is the human resource and program coordinator at Respondent Ozark Opportunities in its Harrison office. She has been employed there for 10 or 12 years. Part of her position is the taking of injury reports. Ozark Opportunities is the sponsoring agency for the Headstart programs in Baxter County. Claimant was an employee of Ozark Opportunities.

She testified that on May 3, 2007 at around 9:30 a.m., Claimant called her at the Harrison office. She reported that she injured her left knee that morning at 8:00 a.m. as she was walking from the classroom to the cafeteria. The knee buckled. Among other questions, Bueg asked her if anything like this had happened before. Claimant answered that something similar had happened to her other leg. Bueg could not recall if Claimant stated that something similar had occurred to her leg prior to May 3, but she added that she would have recalled it if Claimant had so indicated. According to Bueg, Claimant never mentioned being injured on May 2, 2007 or getting hurt while coming to the aid of a child.

#### Testimony-Deposition

Toni Greer. As discussed above, Claimant was deposed on February 7, 2008, and the transcript thereof was admitted as Claimant's Exhibit 3. She testified that she was injured on both May 2 and 3 of 2007 at Respondent Ozark Opportunities. She did not recall the pace she was traveling at the time of the May 2 incident. In addition to telling Teegarden about the knee injury at the time it occurred on the steps while Teegarden was attending to the child, Claimant also told her that her knee was hurting once they returned to the classroom from the cafeteria.

Claimant stated that when she returned to work on May 3, she told Teegarden at about 7:30 a.m. that her knee was swollen and tender. Thereafter, at 8:00 a.m., Claimant injured the knee again after she stepped on the last step after descending the steps from the classroom to the lunchroom. She said that the pain in the knee then intensified, and became sharp instead of a dull throb. The inside of the knee swelled. Claimant testified that she was uncertain if what occurred on May 3 was a new injury. After the children were given their meal, Claimant told Teegarden that she had just injured her knee, and that it hurt very bad. When she returned to the classroom, Claimant filled out a Form AR-N that Teegarden gave her. Later that morning, she went to the doctor.

#### Records-Medical

Claimant's Exhibit 1. The medical records of Claimant that were introduced at the hearing and are part of Claimant's Exhibit 1 reflect that on May 3, 2007, Claimant presented to the Medical Center of IZARD County and stated that she was walking down the steps at work that morning when she felt a "twing" [sic] and then her knee "buckled." She complained of pain and swelling in her left knee. The record reflects that she had "mild effusion" and "mild crepitation." She was assessed as having a left knee sprain and was given an immobilizer. Claimant returned on May 7, 2007 and reported that the pain and swelling in her knee returned when the immobilizer was removed. Again, she had mild swelling. An x-ray of the knee was normal. She was given a referral to an orthopedist. A letter from Dr. Don Wright to Respondent Ozark Opportunities on May 21, 2007 reflects that the Respondent carrier denied the referral and that Wright requested that they either authorize further evaluation of Claimant or extend her recovery.

Dr. Bethany Knight of the Izard County Medical Center on July 9, 2007 signed a letter that stated:

It is my opinion based upon a reasonable degree of medical certainty that the injury that Toni Greer sustained to her left knee on May 2, 2007, when racing down the flight of stairs to give aid to a small child who had fallen on the stair and bloodied his head hopping down the stairs while she was working as a teacher's aid [sic] for Ozark Opportunities d/b/a Norfolk Headstart in Norfolk, Arkansas, is established by objective evidence including but not limited to **observed and measured severe swelling and spasms** and it is certainly reasonable and necessary that she get an MRI of that knee and be referred to see Dr. Chris Arnold, a board-certified orthopedic physician, who specializes in the treatment and repair of knees who practices in Northwest Arkansas.

(Emphasis added) An MRI performed on the left knee on July 12, 2007 showed a "lobulated mass" that Dr. Aubrey Joseph interpreted to be a ganglion cyst.

Claimant presented to the Mountain Home Christian Clinic on December 6, 2007 with crepitus and pain in the left knee. She was given, inter alia, prednisone. She returned on December 20, 2007 and reported that the prednisone helped with the knee pain for seven days. The knee joint was noted to be stable with no effusion, and that there was mild crepitus.

On April 8, 2008, Dr. Knight signed a letter that had identical wording to the one quoted above, but which had the following language added: "Further, it should be noted that a ganglion-type cyst found in the MRI can be caused by trauma and it is my belief that this cyst arises out of the trauma mentioned above based upon the history given."

(Emphasis in original)

When Claimant returned on April 17, 2008, she was assessed as having a Baker's cyst and that her symptoms were "consistent [with] likely torn post horn of medial

meniscus.” The doctor stated that she needed, among other things, pain and anti-inflammatory medication.

Claimant was referred on April 24, 2008 to Dr. Thomas Knox by Dr. Knight. She complained of continued knee pain. X-rays of the knee were noted to be normal with no evidence of arthritis. Knox recommended a repeat MRI, which was performed on April 24, 2008. In interpreting the MRI, Dr. Kyle McAlister found that the lateral meniscus to be normal and the medial meniscus to have only minimal degenerative changes, with no tears. He wrote:

Findings as discussed above with essentially normal-appearing MRI of the knee, other than a popliteal cyst that is extending superiorly. It is rather lobulated appearing. It is on the superomedial aspect of the knee. One usually sees a meniscal tear associated with this, but I am having a hard time seeing any meniscal tear associated with this cystic mass, although it is on the medial aspect of the knee.

Dr. Knox saw Claimant again on May 1, 2008 and wrote:

She continues to complain of pain in the knee. I have once again listened to her complaints, which include burning type pain, etc. I have kindly told her that I cannot correlate the type of soreness and pain that she has in the knee but the MRI does show evidence of a Baker's cyst of the knee. With this, almost always one would see a meniscus tear and Dr. McAlister completely agrees with this. I think this woman needs a diagnostic knee scope and may eventually require open resection of the Baker's cyst of the knee, which once again almost always is noted with meniscus pathology.

#### Records-Nonmedical

Claimant's Exhibit 2. On February 7, 2008, Claimant through counsel wrote the Commission to allege the incidents to which she testified on May 2 and 3 of 2007 and to assert that whether a separate injury occurred on May 3 was not within her knowledge.

Claimant's Exhibit 3. This is the deposition of Claimant recounted above.

Claimant's Exhibit 4. These are Respondents' responses to interrogatories and requests for admission.

Respondents' Exhibit 1. Claimant signed a Form AR-N dated May 4, 2007. In it, she stated that she injured her left knee on that date at 8:00 a.m. when she "stepped wrong" and her knee gave out while she was walking down some stairs. On August 13, 2007, Claimant's counsel described her injury as occurring in the following manner: "At the time of the injury Toni R. Greer was going down stairs to give aid to a 4 year old who had fallen and busted his head when her left knee buckled trying to go too fast with 13 other children around." This same language is contained in the Form AR-C she signed the same day. Unlike the Form AR-N, this gives the date of injury as May 2, 2007. Respondents' Exhibit 1 also contains the May 2, 2007 Headstart accident report for the boy who fell on the stairs. The time of the accident is given as noon. The final document is the same letter as that in Claimant's Exhibit 2.

### **ADJUDICATION**

#### **A. Compensability**

In order to prove the occurrence of an injury caused by a specific incident or incidents identifiable by time and place of occurrence, a claimant must show by a preponderance of the evidence that: (1) an injury occurred that arose out of and in the course of his or her employment; (2) the injury caused internal or external harm to the body that required medical services or resulted in disability or death; (3) the injury is established by medical evidence supported by objective findings, which are those findings which cannot come under the voluntary control of the patient; and (4) the injury was caused by

a specific incident and is identifiable by time and place of occurrence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability, compensation must be denied. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). This standard means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003)(citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947)).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Certainly, Claimant has established that there are objective findings that she had a knee injury at least as of May 3, 2007. On that date, when she presented to the Medical Center of IZARD County, she was noted to have "mild effusion" and "mild crepitation" in the knee. Effusion in the knee can constitute an objective finding. See *Pickens v. Health Resources of Ark., Inc.*, 2007 AWCC 152, Claim Nos. F601983 & F306687 (Full Commission Opinion filed December 7, 2007). Crepitation in the knee can be such a finding as well. See *Goss v. Baker Engr.*, 2002 AWCC 127, Claim No. E910877 (Full

Commission Opinion filed June 19, 2002). Likewise, she has shown that the injury caused internal harm to the body that required medical services.

Moreover, she has proven by a preponderance of the credible evidence that her left knee injury arose out of and in the course of her employment by Respondent Ozark Opportunities, and that it was caused by a specific incident identifiable by time and place of occurrence. Claimant gave detailed testimony at the hearing that she injured her knee on May 2, 2007 at around noon while descending steps to bring a washcloth to a boy who had fallen. She stated that she told Martha Teegarden she had injured herself as she was handing the washcloth to her, and told her again when they were together in the cafeteria. Teegarden's testimony was that she did not recall Claimant telling her of the injury at the time they were treating the fallen boy. Considering that Teegarden at the time was working with an injured child, I am not inclined to give much weight to her testimony on this point. She did, however, recall Claimant telling her about the injury earlier that morning, while the children were having breakfast. However, Teegarden admitted that she was not certain of her testimony. Claimant testified that she told her at breakfast the next morning of the second incident involving her leg. Since Teegarden could not recall being told of this incident the next day, it appears that she is confusing the two incidents, or mixed up concerning whether the conversation took place during breakfast or lunch on May 2. Regardless, due to her foggy recollection I am not inclined to credit her testimony on this point as well. I do note that she recalled that Claimant retrieved a washcloth for the boy, and was limping on the afternoon of May 2.

Audra McLester testified that on May 2, she saw the boy who had fallen, and described him as having a knot on his head. Claimant told her then that the boy had fallen

and that she had hurt her knee while getting a washcloth for him. She also recalled seeing Claimant walking with a pronounced limp that day. McLester, who is not related to Claimant, was one of a number of witnesses who stated that they did not perceive Claimant as having any knee problem prior to May 2, 2007.

Claimant related to Donna Ellis the incident involving the boy and her knee when she saw her on May 5, 2007. Ellis, like McLester, was not aware of any other incident that would have caused Claimant's knee injury. Claimant also told her sister-in-law, Sandra Greer, about this incident that evening. She confirmed that the knee was swollen that evening and that she helped Claimant to bed and cooked the family dinner for her. Claimant's husband, James, likewise related that Claimant told him on May 2 that she had been injured that day at work.

As the testimony set forth above shows, however, Claimant has also described hurting her knee to some degree when she traveled down the stairs the next day. According to her, when her left foot landed on the bottom step, she again felt her knee pop and buckle as it day the day before. However, the pain was sharper and increased, and she testified that she told Teegarden, filled out an accident report, and went to the doctor. It is this incident that is described in the Form AR-N, not the one involving the boy. Moreover, only this incident is reflected in the history of injury she related to the clinic that day when she first saw treatment. Her explanation for not mentioning the May 2 incident on the Form AR-N was that the second incident had just occurred. And she testified that, the record notwithstanding, she related to the provider what had occurred on May 2 as well. While Claimant testified that Jane Bueg was not whom she talked to on the phone on May 3 because she understood that Bueg was on vacation, Bueg testified that the two visited

about the injury. Bueg's recollection was that only the May 3 incident was mentioned, and that she would have recalled if Claimant had recounted the incident regarding the fallen boy. Also, she testified that she asked Claimant if something like this had happened before, and she only related an incident involving her right leg. She stated that she would have remembered if she told about hurting the left one earlier.

Claimant testified that she may at times have conveyed inaccurate information about how she was injured because of the pain she was suffering. By Sandra Greer's testimony, Claimant was in much greater pain on May 3 when she picked her up in the afternoon. She was crying. The testimony of Claimant's husband and McLester corroborates this. I find that this explains the discrepancy in how the injury was reported. The testimony of multiple credible witnesses unquestionably establishes that her knee injury actually occurred on May 2, 2007 as she was coming to the aid of the boy.

After considering and weighing the evidence, I find that Claimant has proven by a preponderance of the evidence that she was injured in the course and scope of her employment on May 2, 2007, and that this injury is identifiable by time and place of occurrence. Therefore, she has met her burden of proving a compensable injury to her left knee.

In reaching this decision, I am aware that Dr. Knight on July 9, 2007 opined that the May 2 incident involving the stairs and the boy was the cause of her knee injury. In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examining medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, *i.e.*, a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. *See, Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

However, I am not inclined to credit Dr. Knight's opinion because she stated that the objective evidence of the injury included "observed and measured severe swelling and spasms." The medical records of Claimant do not reflect spasms, and the "mild effusion" noted in the doctor's notes clearly does not equate to "severe swelling."

B. Reasonable and Necessary Medical Treatment

Claimant has contended that she is entitled to reasonable and necessary medical treatment. This includes not only the treatment rendered thus far, but the surgery that Dr. Knox has recommended she undergo on her knee. As the parties stipulated, Respondents controverted this claim in its entirety.

Arkansas Code Annotated Section 11-9-508(a) (Repl. 2002) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries.

*DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001). “Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.” *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

I have reviewed the history set forth in Claimant’s Exhibit 1 of the treatment she has received for her left knee, and find all of it to be reasonable and necessary. That leaves the question of whether Dr. Knox’s proposed surgery is reasonable and necessary also. Knox noted that her left knee x-rays were normal. The repeat MRI performed on April 24, 2008 showed what Dr. McAlister, the radiologist, interpreted to be a “popliteal cyst.” Dr. Knox on May 1, 2008 read it as being a “Baker’s cyst,” and stated that “[w]ith this, almost always one would see a meniscus tear and Dr. McAlister completely agrees with this.” He concluded his opinion by stating that Claimant needs a diagnostic knee scope and perhaps eventually an open resection of the Baker’s cyst. This recommendation is grounded in Knox’s apparent belief that Claimant has a latent meniscal tear.

His statement that such cysts are “almost always” in indication of a meniscal tear, taken by itself, would arguably suffice to satisfy the criteria that his opinion be stated “within a reasonable degree of medical certainty.” In *Cooper v. Textron*, 2005 AWCC 31, Claim

No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission noted that the Supreme Court has never required “the magic words ‘within a reasonable degree of medical certainty’ even be used by the doctor” (citing *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.2d 760 (2001)).

However, the Commission in *Cooper* hastened to add that “where the only evidence of a causal connection is speculative and indefinite medical opinion, it is insufficient to meet the claimant’s burden of proving causation” (citing *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000); *KII Const. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002)). This is the case here. Knox admitted that he could not correlate the type of soreness and pain that Claimant had in her knee, and he and McAlister both noted that they could not find a meniscal tear on her MRI. Hence, a causal connection between Claimant’s compensable May 2, 2007 injury and the cyst has not been shown; and, consequently, Claimant has not proven by a preponderance of the evidence that she is entitled to the surgery at Respondents’ expense.

### **CONCLUSION AND AWARD**

Respondents is directed to pay benefits in accordance with the findings of fact set forth 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 Ark. Code Ann. § 11-9-809. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge