

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F505794

DELL NITA JEFFERSON, EMPLOYEE **CLAIMANT**

AMFUEL, SELF-INSURED EMPLOYER **RESPONDENT**

**CROCKETT ADJUSTMENT, INC.,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED AUGUST 7, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in El Dorado, Union County, Arkansas.

Claimant was represented by Mr. Mark E. Barton, Attorney at Law, El Dorado, Arkansas.

The respondents were represented by Mr. Michael E. Ryburn, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in El Dorado, Arkansas, on May 20, 2008. A prehearing conference was conducted this matter on March 13, 2008, and a Prehearing Order was filed that same date. A copy of the Prehearing Order was marked as Commission Exhibit "1", and made a part of the record herein without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including October 15, 2004.

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- 3) The claimant sustained a compensable left knee injury on October 15, 2004.

At the full hearing, the parties agreed the sole issue to be determined would be whether the claimant is entitled to additional medical treatment for her left knee.

At the full hearing, the claimant contended that she injured her left knee on October 15, 2004, and that the claim was accepted and some benefits were paid. The claimant contends that she continues to have problems with her left knee, and she claims that additional medical treatment is necessary and should be covered.

At the full hearing, respondents contended that the claimant did injure her left knee on October 15, 2004, and that the claim was accepted and all appropriate benefits were paid. Respondents contended that the claimant has an unrelated left knee problem that apparently arose as a result of sitting for a long period of time while on vacation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of the record as a whole, considering all matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. § 11-9-704:

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

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- 2) The parties' stipulations are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that the additional medical treatment she is now requesting for her left knee is reasonable, necessary, or related to her compensable left knee injury of October 15, 2004. Therefore, the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable left knee injury at this time.

DISCUSSION

The claimant testified that she has worked for Amfuel for twenty (20) years. It was stipulated that the claimant sustained a compensable left knee injury on October 15, 2004, and received some workers' compensation benefits. Specifically, the claimant testified she underwent arthroscopic knee surgery on her left knee in 2005 that was directly related to her October 15, 2004, compensable injury. The claimant testified that the respondents paid for her 2005 left knee surgery.

The claimant testified that following her left knee surgery in 2005, she returned to work around September of 2005. The claimant testified that she worked approximately eight to nine months, but stopped working again around April or May of 2006:

A I went back to work in I believe September of 2005 and I think I worked until maybe like the last of April or the first of May of 2006, so a few months, several months. Maybe it was about 8 or 9 months.

(T. pg. 17, lines 2-5).

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The claimant testified that around April or May of 2006, she took off work again due to some unrelated back problems. The claimant testified that she ultimately went back to work around November of 2006 following the incident with her back and worked up until January of 2007. The claimant testified that in January of 2007, she had to have carpal tunnel surgery on her right hand which was also unrelated to her compensable knee event. The claimant testified that she was off work for her carpal tunnel surgery until the end of February 2007. The claimant testified she worked from the end of February 2007, but then ultimately had to stop working again in March of 2007 due to her back condition.

A Yes. But I did go back to work since the incident with my back. I went back to work in November of 2006 and I worked up until January of 2007. I had to have some carpal tunnel surgery on my right hand so I was taken off then for the carpal tunnel surgery. I stayed off from January until the last of February with that, and then I went back to work.

Q When did you take off because of your back? When did you stop working –

A March.

Q March of 2007?

A 2007.

Q And you have not worked since then?

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A I have not.

(T. pg. 20-21, lines 19-25 & 1-9).

The claimant testified that even after her left knee surgery in 2005, she has continued to have swelling and other problems with her knee. The claimant also testified that she was having problems with her knee “locking up.” The claimant testified that after returning back to work after her left knee surgery that she almost immediately started having swelling and other aches and pains. The claimant contends that she is entitled to additional medical treatment due to her continued swelling, aches, pains, and other problems she has continued to have with her left knee since her left knee surgery in 2005.

Arkansas Code Annotated § 11-9-508(a) provides that an employer shall promptly provide for an injured employee such treatment as may be reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Hamilton v. Gregory Trucking, 90 Ark. App. 248, 205 S.W.3d 181 (2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission.

As stated above, the claimant has the burden of proving by a preponderance of the evidence that her requested medical treatment is reasonable, necessary, and related

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to her compensable injury. The claimant has failed to meet her burden of proof. The record is void of any medical reports recommending additional treatment. The only evidence contained in the record herein that suggests the claimant needs additional medical treatment is the claimant's own testimony. However, even the claimant's own testimony is vague about whether or not her continued complaints of leg pain is related to her compensable injury:

Q And you are still having problems with your leg even today?

A It still hurts from time to time, yes, it does.

Q Are you asking for anything else other than to get another determination of what type of pain and injury this is? Obviously if you get a determination, that may affect what you do from that point on, but are you asking other than to be able to see a doctor and get this determined once and for all?

A Yes, that's what I would like. That is what I want to do.

(T. pg. 15-16, lines 18-25 & 1-4).

A I wanted to see the doctor that had did my surgery, which was Dr. Daniels. At that point his office told me that because it may be Workers' Comp related that they could not take my private insurance. And so I would have to pay what it cost to see the doctor, \$265.00 is what she told me that an office visit would be, and if I made the appointment to see him then I would have to pay \$265.00 at that time because, again, the lady, Dr. Daniels had spoken to her and told her, I'm not for sure if it is anterior or posterior, whichever way the tear was, but if it was not a certain way then they wouldn't pay for it, but if it was the other way, they would. So actually it would be a 50/50 change. If I go in there and if Dr. Daniels say it is anterior and that's the one they are going to pay for, they would pay for it. If I go in there and it s a

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posterior tear, they wouldn't pay for it.

(T. pg. 13-14, lines 14-25 & 1-5).

Per the claimant's testimony, Dr. Daniels has indicated that there is about a fifty-fifty chance that her continued knee problems are related to her compensable injury. Further, the claimant testified that Dr. Daniels indicated that her current problems are probably related to arthritis:

Q Do you know whether you have arthritis in this knee or not?

A You know, and I'm just being quite frank, but doctor you go see, the first thing they will tell you is – even Dr. Daniels said that at my age, and the amount of time that I have stood on the concrete, that it is probably arthritis. That's usually the first thing that they tell you, arthritis, so I guess if you call that a diagnosis, yes, I guess so.

(T. pg. 23, lines 3-11).

Per the claimant's own testimony, the only medical opinion she has is from Dr. Daniels who has opined that her current need for treatment is probably related to her arthritis, and that there is only a fifty-fifty chance that her current problems are related to her compensable injury. Based on the claimant's testimony and the obvious lack of medical reports, I find the credible evidence shows that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable knee injury. At the hearing, the claimant basically testified that she wanted another opinion as to the nature and extent of her current

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knee problems. I do note that since the full hearing in this matter, claimant's attorney has requested a change of physicians through Medical Cost Containment Division of the Workers' Compensation Commission and obviously such a request may be more appropriate at this time.

ORDER

For the reasons outlined herein, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment related to her compensable knee injury at this time. Therefore, the claimant's request for additional medical treatment at this time is denied and dismissed. However, this claim is being forwarded to the Medical Cost Containment Division of the Workers' Compensation Commission to address the claimant's post-hearing request for a change of physicians order.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb