

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310640

RICHARD REDMON	CLAIMANT
OZARK AIRCRAFT	RESPONDENT
NATION UNION FIRE OF PITTSBURGH, INSURANCE CARRIER	RESPONDENT
AIG, TPA	RESPONDENT

OPINION FILED AUGUST 15, 2008

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

Both parties have waived their right to a hearing and have agreed to submit this matter on the issues set out in the pre-hearing order based solely upon a stipulated record. The stipulated record consists of the following:

1. The pre-hearing order of March 31, 2008;
2. Claimant's Exhibit No. 1 to the hearing of January 8, 2007;
3. Respondents' Exhibits No. 1 and 2 to the hearing of January 8, 2007;
4. The medical records submitted by the claimant on May 12, 2008 (consisting of 4 pages);
5. An operative report from Dr. Mark Powell (dated September 29, 2003);

6. A one page written statement from Richard Redmon (dated May 8, 2008);
7. The transcript of the January 8, 2007 hearing; and
8. The Administrative Law Judge Opinion of March 23, 2007.

By agreement of the parties, the following stipulation was offered by the parties:

1. The November 30, 2007 Full Commission Opinion is final and has become res judicata of all issues raised and addressed therein.

By agreement of the parties, the issue to be litigated and resolved at the present time was limited to the following:

1. The claimant's entitlement to additional medical services.

In regard to this issue, the claimant contends:

"On July 20, 2003 claimant was squatting down on a tail stand. As he turned and twisted, he tore the medial meniscus of the knee."

In regard to this issue, the respondents contend that any medical services after July 31, 2007 are not reasonably necessary for the claimant's compensable injury.

DISCUSSION

The sole issue presented for resolution at the present time is the claimant's entitlement to additional medical services. The burden rests upon the claimant to prove that the additional medical

services he seeks represent “reasonably necessary medical services” for his compensable right knee injury of July 20, 2003.

In order to meet this burden, the claimant must show that the additional medical services in dispute were necessitated by or connected with his compensable right knee injury. Further, he must prove that these medical services have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

From the stipulated record, it appears that the medical services in dispute consists of an examination by Dr. Joseph Sewell in Dothan, Alabama, medications prescribed by Dr. Sewell, a knee brace prescribed by Dr. Sewell, and an orthopaedic evaluation recommended by Dr. Sewell.

The medical evidence shows that the claimant has been evaluated and treated by a number of physicians, since his compensable injury in 2003. Initially, the claimant was seen by various physicians in northwest Arkansas, but was primarily under the treatment of Dr. Mark Powell. Dr. Powell is an orthopaedic surgeon and performed the first corrective surgery on the claimant’s right knee. The claimant was subsequently seen by a number of physicians in northern Florida, but was primarily treated by three orthopaedic surgeons. The first of these was a Dr. Theodore Macey. The second was a Dr. George Papacostas. The third was Michael Hartsfield.

Dr. Hartsfield performed the third and most recent surgical repair of the claimant’s right knee on March 16, 2006. On May 11, 2006, Dr. Hartsfield opined that the claimant had reached maximum

medical improvement and released the claimant from further active medical treatment.

On July 31, 2006, the claimant returned to Dr. Hartsfield for an exacerbation of the symptoms involving his right knee. These consisted of symptoms of increased pain and swelling after his knee had given way while walking. The respondents refused to pay for the expense of this evaluation and for the treatment that had been recommended. These medical services were the subject of the prior hearing and opinion in 2007. In this prior opinion, which has now become final, the additional medical services provided by Dr. Powell were found to be reasonably necessary medical services, under Ark. Code Ann. §11-9-508.

Although the claimant complained of his right knee giving way and increased pain and swelling in the knee, Dr. Hartsfield's physical examination recorded that the claimant appeared to be able to ambulate without a limp or apparent pain, that there was no instability of his right knee, no joint line pain, and no crepitus. Dr. Hartsfield did note some mild atrophy of the claimant's right thigh. On July 31, 2006, Dr. Hartsfield opined that the claimant did not have any serious internal derangement of his knee. Dr. Hartsfield changed the claimant's pain medication, directed the claimant to continue to be as active as possible, and instructed him to return in one month or as necessary.

Curiously, once the liability for the expense of the services of Dr. Hartsfield had been finally settled, the claimant did not return to Dr. Hartsfield. Instead, he consulted a Dr. Sewell, who

is apparently a general practitioner. The April 4, 2008 records of Dr. Sewell reveal that the claimant was complaining of knee pain of gradual onset. On his physical examination Dr. Sewell noted no swelling or effusion, no crepitus, no ligamentous instability, or no limitation in the range of motion of the knee. He also noted the claimant's gait to be normal. The medical report of Dr. Sewell indicates that x-rays of the claimant's left knee were taken but the specific results of these studies is not recorded in the medical evidence. As a result of his evaluation, Dr. Sewell prescribed oral pain medications, a right knee brace, and an orthopaedic evaluation.

In his written statement, the claimant has indicated that he has experienced no change in his symptoms, since the prior hearing on January 8, 2007. He further described these symptoms as constant swelling of the knee, locking up of the knee, giving out of the knee, popping of the knee, pain in the knee, and numbness of the lower leg.

The symptoms described by the claimant are not particularly supported by the medical evidence presented. On May 11, 2006, Dr. Hartsfield's physical examination apparently showed no effusion or swelling, no popping, creptius, or locking, and adequate strength. As previously indicated, Dr. Hartsfield's physical examination of the claimant's right knee on July 31, 2006, showed no effusion or swelling, no instability, no crepitus, no popping, or no locking, but did a full range of motion and adequate strength. When the claimant was evaluated by Dr. Sewell on April 4, 2008, the physical

examination of his right knee did not note the presence of any swelling or effusion, any clicking or crepitus, any locking, or any significant loss of strength.

However, the medical record does support the likely existence of some degree of pain and other symptoms with the claimant's right knee, as a result of the compensable injury of July 20, 2003. The medical evidence clearly shows that the compensable injury has resulted in substantial permanent physical damage to the claimant's right knee joint, sufficient to justify a permanent physical impairment rating of 17 percent to the leg. The compensable injury has further caused permanent limitations and restrictions on the claimant's ability to use this portion of his body, as evidenced by the Functional Capacity Evaluation of June 1, 2006. Further, as indicated by the July 31, 2006 report of Dr. Hartsfield, the claimant not only has permanent meniscal damage from his compensable injury, but is now beginning to experience traumatic arthritis of the joint, as a result of his compensable injury.

As noted in the prior Opinion, the nature and magnitude of the permanent physical damage to the claimant's right knee that has been caused by the compensable injury was of such severity that it will reasonably require periodic medical services in the form of a program of medical management of the claimant's chronic and likely permanent symptoms. This remains my opinion.

A review of the actual services provided to the claimant by Dr. Sewell, on April 4, 2008, reveal that these services were directed toward reducing or alleviating the claimant's chronic

right knee symptoms, primarily in the form of pain. The use of oral medication and bracing would be a standard and commonly accepted type of treatment for this purpose.

After consideration of all the evidence presented, it is my opinion that the medical services actually provided to the claimant by and at the direction of Dr. Sewell, on April 4, 2008, were necessitated by or connected with the compensable injury and had a reasonable expectation of achieving their intended purpose. Therefore, these medical services represent reasonably necessary medical services for the claimant's compensable knee injury, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services.

I recognize that Dr. Sewell has also recommended that the claimant be evaluated by an orthopaedic surgeon, specifically a Dr. James DeHaven. The medical evidence presented shows that the claimant has been evaluated and treated by a number of orthopaedic surgeons, the last of which was Dr. Hartsfield. I would further note that, in his report of July 31, 2006, Dr. Hartsfield directed the claimant to return for follow up care in approximately one month after July 31, 2006. This visit appears to have been prevented by the respondents' refusal to accept liability for the July 31, 2006 visit and the subsequent litigation this action required. Thus, the reasonableness and necessity of a further evaluation by an orthopedic surgeon, specifically Dr. Hartsfield, is not only supported by the reports and records of Dr. Sewell, but

also by the reports and records of Dr. Hartsfield, himself. In regard to any orthopaedic evaluation and treatment that may be necessary, Dr. Hartsfield not only has the necessary medical expertise, but is familiar with claimant's condition, prior test results, prior examinations, and prior treatment. Clearly, he is the most logical choice to provide these services.

After consideration of all the evidence presented, it is my opinion that an evaluation and possible treatment by Dr. Hartsfield of the claimant's current right knee difficulties represents reasonably necessary medical services for the compensable injury, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services.

In reaching the foregoing decisions, I am aware that the greater weight of the medical evidence presented supports the conclusion that the claimant's healing period has likely ended. However, the mere fact that a claimant's healing period may have ended does not extinguish his right to any and all further medical services. Both the Legislature and the Appellate Courts have recognized that the need for medical treatment, primarily in the form of the medical management of permanent or indefinite chronic symptoms constitutes reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Not only does the claimant's entitlement to such medical services continue to beyond the date of the healing period, but even continues, to some extent, beyond the expiration of the statute of limitations.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On July 20, 2003, the relationship of employee-employer-carrier existed between the parties.

3. On July 20, 2003, the claimant sustained a compensable injury to his right knee.

4. Liability for medical expenses incurred through July 31, 2006 has been previously resolved and these expenses have been paid.

5. The medical services provided to the claimant by and at the direction of Dr. Joseph Sewell, on April 4, 2008, represent reasonably necessary medical services under Ark. Code Ann. §11-9-508. Specifically, such medical services were necessitated by or connected with the claimant's compensable injury of July 20, 2003 and had a reasonable expectation of accomplishing their intended course or goal of reducing or managing the claimant's chronic symptoms from his compensable knee injury. Therefore, the respondents are liable for the expense of these medical services.

6. The orthopaedic evaluation, which was recommended by Dr. Sewell on April 4, 2008, also represents a reasonably necessary medical service for the claimant's compensable injury. Specifically, this medical service was necessitated by or connected with the claimant's compensable injury and has a reasonable expectation of accomplishing its intended purposes or goals of monitoring the level of healing achieved and formulating, and

providing an appropriate treatment program to manage the chronic symptoms from the compensable knee injury. However, it is my opinion that Dr. Hartsfield is the appropriate authorized physician to provide this evaluation and possible treatment. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of this evaluation and possible treatment.

7. The respondents have controverted the claimant's entitlement to any additional medical services, after July 31, 2006.

8. As no controverted benefits have been awarded to the claimant, no controverted attorney's fee can be awarded to his attorney.

ORDER

The respondents shall be liable for the expense incurred as the result of the evaluation and treatment of the claimant's right knee difficulties by and at the direction of Dr. Joseph Sewell, on April 4, 2008. This liability is subject to the medical fee schedule established by this Commission.

The respondents shall be liable for the expense of an orthopaedic evaluation and possible treatment of the claimant's right knee difficulties by Dr. Michael Hartsfield. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE