BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F113243

MICHAEL G. SPERRY, EMPLOYEE — CLAIMANT

BEL ARCO, EMPLOYER
FAIRFIELD INSURANCE COMPANY/
CANNON COCHRAN MGMT. SERVICES, CARRIER/TPA — RESPONDENT #1

SECOND INJURY FUND — RESPONDENT #2

DEATH & PERMANENT TOTAL DISABILITY
TRUST FUND — RESPONDENT #3

OPINION FILED JANUARY 11, 2008

Hearing before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on November 21, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by THE HONORABLE FREDERICK S."RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondent #1 represented by the HONORABLE MICHAEL RYBURN, Attorney at Law, Little Rock, Arkansas.

Respondents #2&3 waived appearance at the hearing.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 21, 2007, in Mountain Home, Arkansas. A Prehearing Telephone Conference was conducted on August 13, 2007, and a Prehearing Order was filed on that same date.

The following stipulations were submitted by the parties either in the Prehearing Order or during the hearing, as these are hereby accepted.

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including November 6, 2001.

3. Claimant's compensation rates are $187.00 and $154.00.

4. Claimant sustained a compensable injury on November 6, 2001 to his right leg (knee).

5. Respondent #1 has paid some medical benefits and temporary total disability compensation, and made payment on the 17% rating.

6. Additional indemnity benefits have been controverted.

By agreement of the parties, the issues to be presented at the hearing were as follows:

1. Additional medical benefits pursuant to Dr. Arnold's recommendation of a total knee replacement, as well as unpaid medicals in the form of prescription medications.

2. Additional temporary total disability-dates will be provided at the time of the hearing. (At the time of the hearing, the claimant alleged his entitlement to temporary total disability from September 15, 2006, until a date yet to be determined).

3. Constitutional issues.

Claimant contends that he is entitled to additional temporary total disability compensation, the additional medical treatment as recommended by Dr. Christopher Arnold, and payment for unpaid prescription medications. The claimant further contends that payment of his Social Security Disability benefits does not relieve

respondent #1 from paying him temporary total disability which is mandated by the Arkansas Workers' Compensation Statute. The claimant also challenges the constitutionality of the Arkansas Workers' Compensation Act.

Respondent #1 contends that the claimant has been paid appropriate benefits for his scheduled injury. Respondent #1 further contends that claimant's healing period ended at the point that the 17% rating was assessed; therefore, the claimant is not entitled to any additional benefits except those currently being paid.

Respondent #2 waives appearance at the hearing in this case.

Respondent #3 contends that since permanency is not at issue at this time, it waives appearance at the hearing in this case.

The documentary evidence in this case consists of the Commission's Prehearing Order, the claimant's response to the prehearing questionnaire, and respondent's #1 response to the prehearing questionnaire, which were all marked as Commission's Exhibit No. 1. The claimant's medical packet has been marked as Claimant's Exhibit No. 1. The claimant's April 23, 2007 letter to Attorney Michael Ryburn regarding prescription bills was marked as Claimant's Exhibit No. 2. The claimant's Constitutional Issues have been blue-backed and marked Claimant's Exhibit No. 3, as these are hereby incorporated herein by reference. Respondent's #1 medical packet was marked as Respondent's Exhibit No. 1.

The following witness testified at the hearing: the claimant.

Discussion

The claimant, age 56 (8/26/51), sustained an admittedly compensable injury to his right leg while working for the respondent-employer on November 6, 2001. He admitted to having received various treatments for his compensable injury during the last six years. Specifically, the claimant testified he has done physical therapy and exercises as his doctors have indicated he should. According to the claimant, as of the date of the hearing he continues to do home exercises. He also testified he has done electronic stimulation for pain and muscle tone, but he still continues with constant pain.

He testified he is unable to get up and get around, as he is unable to be on his knee, and he never knows one step from the next if it will be there. According to the claimant, this is part of the reason that he uses a cane, as he has fallen two or three times and been caught by cars, the edge of buildings, posts, and his wife several times. The claimant testified that he is in constant pain and it interferes with his sleep, as he is awakened with moderate to severe knee pain.

With respect to Dr. Arnold's treatment, the claimant testified that he has been satisfied with his care. Specifically, he testified that Dr. Arnold has tried everything, including vasco supplementation, cortisone injections, and lots of extra rehab to try and get his knee stabilized, but it has steadily

worsened. The claimant maintains he has done everything the doctor has instructed him to do with regard to physical therapy and doing the exercises at home, and things of that sort. According to the claimant, he takes Ultracet, two or three times a day, plus over-the-counter meds, ice packs, and electronic stimulation a couple of times a day for about 45 minutes to an hour and a half per session.

Although the claimant admitted to drawing Social Security Disability benefits, he denied that they have ever paid any of his medical bills for his work-related injury. The claimant testified he is requesting that the respondent pay the medical bills outlined in Exhibit 2, except for the mileage, as they have paid this just recently, but have refused to pay for the prescriptions. According to the claimant, he is asking to be reimbursed for $167.20 minus the .59 cents,(which amounts to $166.61). The claimant essentially testified that the respondents owe him $1,163.00 and some odd cents in prescription bills from October up to the time they transferred to Carlisle Medical, for a total of about $1,100.00 to $1,200.00. He next explained:

> Q. And even the mileage in here needs to be reimbursed?
>
> A. The milage from April to present. Anything from October to I think it was April has been paid.
>
> Q. All right.
>
> A. The mileage was paid, the prescriptions weren’t.

On cross examination, the claimant admitted to having four scopes done in four years on his knee. The claimant testified that after the first scope, he returned to work for another company

part-time because Bel Arco had no work for him. According to the claimant, he washed dishes part-time, 30 to 31 hours per week, up until the time of his first surgery by Dr. Arnold. The claimant testified e was never been released to go back to work. The claimant testified that he has not felt that he could return to work because he has never been able to get up and get around on his leg because he has been required to use a crutch or cane since the accident.

The claimant testified he began treating with Dr. Arnold the last of 2002, about October of 2002, and through all of the treatment, he has never returned to work and had only some improvement after the treatment. The claimant testified, "My knee feels kind of like a wore out U-joint as I take a step and the weight comes down on it, it kind of shifts and twists. "Sometimes it's there, sometimes it's not."

The claimant denied having rheumatoid or any type of inflammatory arthritis. The claimant admitted he has been on Social Security Disability for approximately two years, and was found to be disabled back to the date of the accident. He admitted that Dr. Arnold assessed him with a 17% rating back in 2004, for which he received payment. According to the claimant, after receiving the rating, he underwent two more surgeries.

The claimant admitted to having a previous injury to his right knee as a result of a car accident in 1981. He essentially testified that he underwent surgery, but recovered 100% from this accident. Specifically, he testified that after surgery, he was

able to walk, run up and down ladders, roofs, do installations, and crawl, but now he is unable to do any of this.

He essentially admitted that Dr. Arnold started talking about a knee replacement several years ago. The claimant admitted to being referred by the respondents to Dr. Lowry Barnes and and having some new tests being performed, which included an MRI in July of 2007, which were performed at Baxter Regional Hospital.

The claimant admitted that his July 2007 MRI reads almost exactly the same as it did in December of 2001. He also admitted that there is another recent test, a bone scan, but he denied any other recent tests as far back as 2007. The claimant admitted that none of the MRI scans demonstrates an unremarkable knee, but afterwards they went into his knee and "found some tears in it and what have you that didn't get cleaned up." The claimant denied any surgeries since the tests in July of 2007.

He admitted that all of his medication is now being paid for by the Carlisle Medical Group. The claimant admitted that all unpaid medical bills or prescriptions are in the record, with the exception of a little mileage.

With respect to his Social Security benefits, the claimant admitted it was approved back to a date during the time when he was receiving workers' comp, therefore they offset his Social Security by about $150.00, as he is allowed to have so much extra per month. The claimant further admitted that if he is approved for temporary total disability for this claim, his Social Security Disability benefits will be offset by whatever the offset is per month from

that time up until the present. As of the date of the hearing, the claimant testified he receives approximately $880.00 per month in Social Security Disability benefits.

A review of the medical evidence demonstrates that on February 3, 2003, the claimant saw Dr. Christopher Arnold for recheck of his right knee. His impression was "right knee pain after a work-related injury with subsequent arthroscopy." Dr. Arnold reported, in pertinent part:

> Plan: I think most of his symptoms are coming from chondromalacia patella. He still has some residual quad atrophy but has been quite compliant with his therapy. I told him the next step would be to possible consider an injection. He is agreeable to this....

After advising the claimant of the risks involved in this procedure, Dr. Arnold performed an injection into his right knee. The claimant was scheduled for a follow-up visit in approximately two months.

On July 3, 2003, the claimant saw Dr. Arnold for recheck of his right knee. He reported, in part:

> HISTORY: He is a very pleasant 51 year-old gentleman who originally had a knee injury in 1981 with a subsequent arthroscopy. He recovered 100% from this. On 11/6/01 he was working at Bell Arkco [sic] when he slipped twisting his right knee. He subsequently went on to have an arthroscopy in Mountain Home on 1/21/02 at which time he had Grade II chondromalacia patella. He also had some fraying about the lateral meniscus and no signs of a meniscal tear. He was seen in my office for the first time on October 10, 2002 and had persistent pain. I outlined an exercise program for him, given him a corticosteroid injection, physical therapy, anti-inflammatories and he has had no relief with the conservative program. He continues to have mechanical signs and symptoms. He complains of medial joint line pain as well as retropatellar pain and presents today to discuss further treatment options.

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> IMPRESSION: Right knee pain after a work-related injury.
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> PLAN: I discussed further options with him regarding continued observation which has failed, injections which have failed, pain management which he declined, physical therapy which has failed, MRI which I don't think would be so accurate after an arthroscopy. He has continued to be quite symptomatic despite an extended course of therapy for the past ten months and he would like to have an arthroscopy. He understands any pain from arthrosis may persist and any pain from a loose body may be improved. He also understands this may be purely diagnostic in nature but I think it is the next appropriate step. We discussed the possibility of viscosupplementation however I think it is prudent to proceed with an arthroscopy first to evaluate the joint and look for any loose bodies as he has more mechanical than arthritic type symptoms.
>
> Of note on his most recent Kim-Con, he did have significant quad and hamstring weakness. He has been quite diligent about rehabilitating the knee and his quad strength has improved. We discussed the possibility of repeating a Kim-Con however he would like to hold off on this. I think it is reasonable to proceed with a diagnostic arthroscopy. There are certain risks regarding infection, persistent symptoms, damaged nerves/vessels/tendons, blood clot, cardiopulmonary complications, need for further surgery, instability, stiffness, weakness, death, worsening pain, wound problems, etc. He understands and would like to proceed. The bottom line is that he understands any pain from arthrosis or any pain from any muscular weakness may persist. I will see him the day of surgery.

Dr. Arnold performed right knee arthroscopy with lateral meniscectomy, chondroplasty of the medial femoral condyle, patella, synovectomy on September 5, 2003. He reported the following arthroscopic findings:

> Grade II changes about the patella. Trochlea clear. Grade III chondral defect of the medial femoral condyle. The medial meniscus was intact. The medial tibial plateau was intact. The ACL and PCL were intact. Grade II chondral changes lateral plateau. There was a tear about the lateral meniscus.

The claimant saw Dr. Arnold for recheck of his status post right knee arthroscopy on September 17, 2003. At which point, he recommended therapy.

On November 5, 2003, Dr. Arnold reported the claimant's pain was better than before surgery, but that he was still having some weakness and a sense of the knee giving out and an unusual sense that the knee was not being part of him. Dr. Arnold noted that the claimant's biggest problem was probably quad atrophy. Specifically, Dr. Arnold reported, "He debilitated quite a bit before surgery and I think this is the biggest thing causing his symptomatology." With respect to his sense of the knee being absent, Dr. Arnold attributed this to his quads being weak. He also noted that the claimant's knee gives out on him. Dr. Arnold recommended continued formal therapy.

The claimant saw Dr. Arnold for recheck on January 29, 2004. He reported that the claimant had initially done very well with the right knee arthroscopy, but had experienced a couple of episodes where he stumbled and had recurrence of his symptoms. Dr. Arnold also noted that the claimant subsequently went to see Dr. Mulholland at the referral of workers' compensation for a second opinion who obtained an MRI that revealed a lateral meniscus and a medial meniscus tear, for which Dr. Mulholland recommended an arthroscopy. According to Dr. Arnold, the claimant was now reporting a recurrence of his symptoms, which were identical to those he had before his last arthroscopy. Dr. Arnold reported, in

part,"I told him this is a very complex issue. He has had two knee arthroscopies after this most recent injury in January 2002 [sic] and we know he has some chondral defects that may be causing some arthritic type pain however he now has had a recurrence of mechanical type symptoms." Dr. Arnold gave the claimant an injection into the right knee and discussed further options with him. The claimant reported that he felt something was loose within his knee. Therefore, he chose to proceed with a diagnostic arthroscopy.

Dr. Arnold performed right knee arthroscopy, chondroplasty patella, and medial and lateral femoral condyle on February 13, 2004. He reported the following arthroscopic findings:

> Grade II-III chondral changes about the patella, softening about the trochlea. There was an undersurface tear at the junction of the mid body and posterior horn of the medial meniscus with an unstable flap. He was status post prior chondroplasty about the medial femoral condyle which was stable. The ACL and PCL were intact. There was a new tear about the lateral meniscus. The lateral femoral condyle and lateral tibial plateau were intact. The lateral gutter was clear.

The claimant saw Dr. Arnold for recheck on February 26, 2004. The claimant reported some soreness and walked with one crutch. On examination, Dr. Arnold noted the claimant had some mild swelling and effusion, but no erythema or calf pain. Dr. Arnold ordered formal physical therapy to work on his quad strengthening exercises.

On April 14, 2004, Dr. Arnold reported that the claimant was still having a significant amount of pain although he had been 100% compliant with his recommendations. According to Dr. Arnold, the

claimant's two arthroscopies had revealed significant pathology. He also noted that the claimant had significant quad atrophy and needed to continue with formal therapy, and he noted the claimant would be an excellent candidate for switching the E-Stim to the radio-frequency unit.

Dr. Arnold reported on July 21, 2004, that the claimant had seen Dr. Cannon since his last visit and had been on Neurontin, which had improved his neurogenic pain approximately 80%.

On October 6, 2004, Dr. Arnold determined that the claimant had reached a plateau. Therefore, he ordered a functional capacity evaluation.

The claimant saw Dr. Arnold on October 18, 2005. At that time, he noted that he believed the claimant had post-traumatic arthrosis. He also noted that the claimant did in fact have post-traumatic wear, which would require further treatment such as corticosteroid injections, visco-supplementation and that he would probably need another knee scope at some point and eventually he would need a knee replacement. However, Dr. Arnold felt it would be prudent for the claimant to see Dr. Cannon again because he had good relief from the Neurontin, and also wait and see how he does with the course of visco-supplementation.

On April 18, 2006, the claimant returned to see Dr. Arnold, with a reported complaint of a recurrence of pain. He noted the claimant had undergone corticosteroid injections and visco-supplementation without any long lasting relief, and that he had seen Dr. Cannon, as a conservative program was outlined. Dr.

Arnold wrote, "He presents today and would like something done with the knee. It is mechanical in nature." His impression was "right knee pain secondary to probable post-traumatic arthrosis with a new chrondral defect." As a result, Dr. Arnold made the following observations and recommendations:

> PLAN: He has failed therapy, anti-inflammatories, corticosteroid injections and viscosupplementation. I think it would be prudent to have him see a rheumatologist. If the rheumatological workup is negative, we could repeat the cortisone injections but this has not offered much relief. We could repeat the viscosupplementation but this has not done much. We could get a MRI but after four arthroscopies I don't think this is going to be true finding. I think it would be prudent to scope the knee again but he is looking to have a knee replacement I think within the next five years. He understands the fifth knee scope may not give as much relief as the first scope or the subsequent scopes. After a lengthy discussion he would like to have the knee scoped if the rheumatological workup is negative. He understands any pain from the arthritis will stick around, any neurological pain will stick around and any pain from the RSD will stick around. Currently there are no signs of any RSD or neurological disorder. Other risks were discussed with the patient including but not limited [sic] an infection, damage to nerves/vessels/tendons, persistent symptoms, stiffness, weakness, blood clot, heart/lung problems, need for further surgery, worsening pain, worsening symptoms, compartment syndrome, loss of limb, stroke, fracture, dislocation, wound healing problems, death, etc. He understands and would like to proceed. If the rheumatological workup is negative, we will scope the knee.

On August 8, 2006, after conducting blood studies, Dr. Ronald Rubio reported that he did not see any evidence of inflammatory arthropathy. He further reported that the claimant's right knee pain was more mechanical in nature.

Dr. Arnold reported, in pertinent part, the following on March 28, 2007:

> SUBJECTIVE: He follows up today for recheck. He has had four surgeries in four years on his knee. He has not ever obtained much relief. I scoped his knee this past fall and did a microfracture and this has not helped at all. He has failed therapy, anti-inflammatiories, arthroscopy, corticosteroid injections and visco-supplementation. He has had an extensive workup from a rheumatological and neurological standpoint and this has all failed. He has constant pain and he is ready to have something done. He has pain at rest as well as with daily activities.
>
> *****
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> IMPRESSION: Right knee pain secondary to postraumatic arthrosis. At his last scope he had Grade IV chondral changes.
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> PLAN: I discussed the options with him. He has failed therapy, anti-inflammatories, corticosteroid injections, arthroscopy and microfracture, viscosupplementation, rheumatological work, neurological workup. He is six months from his surgery. He is ready to have something done. He has failed everything else. The next step may be a cartilage salving procedure or a knee replacement. I think he is little far for a cartilage salving procedure. He wants to have the knee replaced. We will try to get him approved by workers' compensation for this. I discussed the relative success rate with him. When he is approved, we will replace the right knee. I could have him see someone else for a second opinion and I will leave that up to him.

The claimant saw Dr. Lowry Barnes on June 21, 2007 for an independent medical evaluation. He recommended the claimant undergo a triple bone scan of the right knee and a repeat MRI, before recommending a right knee replacement.

An MRI of the right knee was performed on July 24, 2007, with following impression, "essentially unremarkable MRI of the right knee." Also on that same date, the claimant underwent a triple phase bone scan of the right knee, with the following impression:

> Relatively mild activity seen only on the delayed images in the medial compartment of the right knee. The appearance is most consistent with some mild degenerative-type change. There is no evidence of osteomyelitis, fracture, or acute prosess.

On August 15, 2007, Dr. Barnes reported that it was his impression that the claimant did not need a total knee replacement based upon the results of his MRI, bone scan and plain radiographs as well as his clinical examination.

Dr. Arnold reported the following on October 9, 2007, to the claimant's attorney:

> I have reviewed Dr. Barnes letter as well as the reports from the MRI and the bone scan of his knee. I do agree, based on his plain films, he is not a typical candidate for a total knee replacement; however, at the time of his most recent arthroscopy, he did have exposed bone and a microfracture which failed.
>
> In my opinion, the next appropriate step would be a corticosteroid injection, which he has failed, visco supplementation, which he has failed, repeat arthroscopy, which he has failed. This leaves either the option of leaving it as is with persistent pain versus some sort of cartilaginous salvaging procedure, which I feel would be unsuccessful, or a total knee.
>
> I still recommend a total knee based on the operative findings at the time of my last scope. I am uncertain of Dr. Barnes had the privilege of viewing the photos which showed the exposed bone. I would be curious to see what his opinion is after reviewing these.

Adjudication

A. Motion to Recuse and Constitutional Challenges of the Act

The claimant filed a Motion to Recuse and a Brief in support of said Motion with the Commission on October 31, 2007. Therein, the claimant sought my recusal from hearing this case, and

challenged, *inter alia*, the constitutionality of the Workers' Compensation Act as it provides for the administrative adjudication of workers' compensation claims. At the time of the hearing, the claimant renewed his Motion to Recuse and challenged the constitutionality of the Act. With respect to the claimant's Motion for Recusal and the balance of the motion pertaining to the constitutional challenges, I find that the Arkansas Court of Appeals has soundly rejected the same arguments in *Long v. Wal-Mart Stores, Inc.*, ___ Ark. App. ___, ___ S.W.3d ___ (Ark. Ct. App. Feb. 21, 2007). Therefore, the claimant's Motion for Recusal is denied, and I find his constitutional challenges to be without merit.

B. Medical Treatment

The next issue for determination is whether the total knee replacement recommended by Dr. Arnold is reasonable and necessary treatment for the claimant's injury of November 6, 2001.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that he is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

Although respondent #1 has paid and continue to pay some

benefits for the claimant’s compensable right knee injury of November 6, 2001, it has resisted to pay benefits for the claimant to undergo a total knee replacement. Therefore, the claimant is asserting his entitlement to this treatment.

In the present matter, it is not controverted that the claimant suffered a compensable injury to his right knee on November 6, 2001. Since this time, the claimant has undergone right knee arthroscopy on four separate occasions within a four-year span, received extensive conservative care, which includes but is not limited to, extensive physical therapy, steroid injections, home exercises, an extensive medication regimen, pain management, and visco-supplementation, with only temporary relief of his symptoms. At the time of his most recent arthroscopy, Dr. Arnold opined that the claimant had exposed bone and a microfracture, which failed. In addition to this, Dr. Arnold opined that prior surgeries revealed significant pathology. The claimant credibly testified he has been compliant with Dr. Arnold’s recommendations. However, the claimant further testified he continues in constant to severe pain, with episodes of stumbling and in some instants falling as a result of his knee “giving out.” Despite extensive treatment the claimant’s compensable injury has significantly impaired his ability to function and resulted in quad atrophy and adversely affected his ability to sleep. On October 9, 2007, Dr. Arnold essentially opined that basically the only other option of treatment for the claimant would be a total knee, in light of all of the prior failed treatments.

Therefore, based on the expert opinion of the claimant's treating physician, considering the persistent and debilitating nature of the claimant's symptoms after four failed surgeries and failed extensive conservative treatment, there being absolutely no evidence of an independent intervening cause, I find that the treatment in the form of a total knee replacement as recommended by Dr. Arnold is reasonable and necessary in connection with his compensable right knee injury of November 6, 2001.

While I recognize that Dr. Barnes has essentially opined that a total knee replacement is not reasonable and necessary treatment in connection with the claimant's compensable injury because the recent bone scan, MRI, and plain radiographs and his clinical examination did not reveal any objective findings (except some mild degenerative type change. No evidence of ostemoyelelitis, fracture or acute process), I attach minimal weight to this opinion given all the afore cited evidence to the contrary, which includes the expert opinion of the claimant's treating physician who has observed significant pathology, and because it is well-settled that a claimant is not required by law to establish a need for ongoing medical treatment through evidence of objective medical findings. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W. 2d 1 (1999). In addition to this, it has been long settled that the employer takes the claimant as it finds him and employment circumstances that aggravate preexisting conditions are compensable. Williams v. L&W Janitorial, Inc.,85 Ark. App. 1, 145 S.W. 3d 383 (2004).

The claimant also alleges his entitlement to payment of the unpaid prescription bills of record. I find that the unpaid prescription bills of record are reasonable and necessary treatment for the claimant's compensable leg injury of November 6, 2001 pursuant to Ark. Code Ann. § 11-9-508(a). These medications were all prescribed for his compensable injury and are drugs commonly prescribed to relieve the symptoms resulting from his compensable injury.

C. Temporary total disability

The claimant's injury is a scheduled injury. He contends that he is entitled to temporary total disability compensation from the date of his last surgery, September 15, 2006, to a date yet to be determined.

An employee who has suffered a scheduled injury shall receive temporary total disability compensation during his healing period or until he returns to work, whichever occurs first. Ark. Code Ann. § 11-9-521(a); Wheeler Const. Comp. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

In the present matter, the record demonstrates that the healing period for the claimant's compensable scheduled injury began on November 6, 2001, and has continued since this time. The claimant's testimony indicated he returned to work after his compensable injury for a short period for another employer. His testimony further indicated that this work occurred with another employer after his first scope and up until the time of his first surgery with Dr. Arnold, which occurred on September 5, 2003.

Since this time, the claimant has not returned to work, and has remained under treatment for his compensable injury. After the September 2003 scope, the claimant has had two additional surgeries to his knee and various other forms of conservative treatment, and diagnostic testings. The claimant testified that he continues with constant and severe knee pain. As of October 9, 2007, the claimant's treating physician, Dr. Arnold had recommended that the claimant undergo total knee replacement, a procedure which the evidence demonstrates to be reasonable and necessary treatment for the claimant's compensable injury.

In sum, I find that the evidence as a whole demonstrates that the claimant has consistently sought reasonably necessary medical treatment following the compensable injury and has remained within a healing period for his compensable injury and not returned to work (with the exception of the aforementioned brief work), so as to prove his entitlement to temporary total disability compensation from September 15, 2006, until a date yet to be determined.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including November 6, 2001.

3. Claimant's compensation rates are $187.00 and $154.00.

4. Claimant sustained a compensable injury on November 6, 2001 to his right leg/knee.

5. Respondent #1 has paid some medical benefits and temporary total disability compensation, and made payment on the 17% rating.

6. Additional indemnity benefits have been controverted.

7. The claimant's Motion to Recuse is denied and his constitutional challenges of the Act are found to be without merit pursuant to *Long v. Wal-Mart Stores,Inc.*, ____ Ark. App.__ ,__S.W.3d ___(Ark. Ct. App. Feb. 21, 2007).

8. The claimant proved by a preponderance of the evidence that the total knee replacement is reasonable and necessary treatment for his compensable injury of November 6, 2001. The unpaid prescriptions bills of record are reasonable and necessary treatment for his compensable injury.

9. The claimant has remained within his healing period since his compensable and not returned to work since his brief work period in 2003, so as to prove his entitlement to temporary total disability compensation from September 15, 2006, to a date yet to be determined.

10. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

AWARD

The claimant has proven his entitlement to additional temporary total disability compensation from September 15, 2006, to a date yet to be determined. Respondent #1 should pay temporary total disability to this claimant for this period of time.

Respondent #1 should also pay for all reasonable and necessary medicals awarded herein, to include the recommended right knee surgery by Dr. Arnold, resulting from the November 6, 2001, compensable injury, and the unpaid prescription bills of record.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits, pursuant to

Arkansas Code Ann. § 11-9-715.

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

This award herein awarded shall bear the maximum legal rate until paid.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge