

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410195

ANITA F. WALKER,  
EMPLOYEE

CLAIMANT

OUACHITA COUNTY MEDICAL CENTER,  
SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
THIRD PARTY ADMINISTRATOR

RESPONDENT

**OPINION FILED FEBRUARY 1, 2008**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in El Dorado, Union County, Arkansas.

The claimant was represented by HONORABLE BILLY J. HUBBELL, Attorney at Law, Crossett, Arkansas.

The respondent was represented by HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on November 8, 2007, in El Dorado, Arkansas. The Prehearing Order was entered in this case on November 7, 2006. The Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties and are hereby accepted:

1. The employee/employer/carrier relationship existed on or about July 6, 2004.

2. The claimant sustained a compensable injury to her left knee in the form of a torn meniscus.
3. Benefits were paid with respect to the meniscus injury.
4. The respondent paid the claimant temporary total disability compensation from September 24, 2004, through January 3, 2005, at the rate of \$135 per week.
5. The claimant last worked for the respondent at light duty on March 24, 2005.
6. The claimant's 2005 earnings from Securitas Security Services were \$765.38.
7. The claimant's 2005 earnings from Camden Living and Rehabilitation were \$95.93.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited during the course of the hearing to the following:

1. Additional medical treatment (i.e. surgery) proposed by Dr. James Mulhollan in his April 20, 2005, letter to Risk Management Resources. (T. 36)
2. Additional temporary total disability compensation from March 25, 2005, to a date yet to be determined, with an appropriate offset to the

respondents for 2005 earnings from Securitas Security Services and from Camden Living and Rehabilitation. (T. 63-65)

3. Permanent disability benefits. (Reserved)
4. Attorney's fees.

The record consists of the November 8, 2007, hearing transcript and the exhibits contained therein.

### **DISCUSSION**

#### **1. EVIDENTIARY OBJECTION**

On page 18 of the hearing transcript the claimant's attorney objected to the respondent's attorney questioning the claimant as to the emergency room doctor's diagnosis when she saw Dr. Tabe. The claimant's attorney's objection to the claimant's hearsay answer is hereby sustained.

#### **2. ADDITIONAL BENEFITS**

Anita Walker sustained a compensable left knee injury on July 6, 2004, while employed as a certified nurse's assistant performing home health care for Ouachita County Medical Center. Ms. Walker bumped her knee on the rail of a hospital-type bed in a patient's home. She did not have any immediate pain; the knee began to hurt the next day.

Through a course of treatment, Ms. Walker underwent an MRI and then a left knee partial lateral meniscectomy and

chondroplasty of the patella performed by Dr. Greg Massanelli in October of 2004. After a course of physical therapy, Dr. Massanelli released Ms. Walker to regular duty work beginning on November 8, 2004. However, based on Ms. Walker' persistent pain complaints, Dr. Massanelli ordered another MRI on November 29, 2004. On December 2, 2004, Dr. Massanelli concluded that the MRI did not indicate any operative condition. Dr. Massanelli indicated that Ms. Walker should remain off work and return in four weeks.

Risk Management Resources then referred Ms. Walker to Dr. James Mulhollan, a Little Rock knee specialist. Dr. Mulhollan sent Ms. Walker's diagnostic test results (including the two MRIs) to a Boston orthopedic radiologist. According to Dr. Mulhollan's letter dated December 21, 2004, the most recent MRI (i.e., after surgery) indicated an injury to the anterior cruciate ligament and bony surface changes in the lateral compartment of the knee. Dr. Mulhollan interpreted the bony changes as "a pressure overload, osteonecrosis, if you will, and not any change related to a fresh injury." Dr. Mulhollan recommended that Ms. Walker use two crutches, remain off work, exercise on a stationary bicycle, perform extension exercises and diet.

Ms. Walker returned to light duty work on January 4, 2005. No report from Dr. Mulhollan's February 15, 2005, office visit is in the hearing record. However, Karen Delavan's February 24, 2005, Progress Report from Rehabilitation Management, Inc. to Risk Management Resources indicates that Ms. Walker had scheduled the appointment with Dr. Mulhollan for February 15, 2005, due to increasing pain in her knee. However, Ms. Walker also requested a return to her regular duties because she felt that she could perform the required duties without a problem. According to Ms. Delavan's report, Dr. Mulhollan released Ms. Walker to usual job duties without restriction and scheduled a return to the clinic in ten weeks when Ms. Walker should be at maximum medical improvement.

Notwithstanding the release to regular duty in February, Donna Jeffus, the Safety Director at Ouachita County Medical Center, tried to keep Ms. Walker on light duty. While working light duty, Ms. Walker was paid her regular wages. During the last part of Ms. Walker's light duty in March of 2005, Mary Bridges, Director of Human Resources at Ouachita County Medical Center, had Ms. Walker collating pages for handouts while sitting at a desk in the reception area outside Ms. Bridges' office.

Ms. Walker presented to Dr. Mulhollan on March 22, 2005, and indicated that she had been off her knee but that the knee was killing her. Dr. Mulhollan offered additional arthroscopic surgery to obtain specific information about the present status of Ms. Walker's knee.

Ms. Walker left work after four hours on March 24, 2005, and according to Ms. Bridges, never contacted Ouachita County Medical Center again prior to being terminated in June of 2005. Ms. Walker testified that she did not go back to work on March 24, 2005, because her leg was hurting so bad it made her cry. However, Ms. Bridges testified that Ms. Bridges never saw Ms. Walker cry, and Ms. Walker advised the State of Arkansas Employment Security Department later that she quit her paperwork job because she did not like doing that.

Risk Management Resources would not authorize the additional arthroscopic surgery that Dr. Mulhollan proposed and instead referred Ms. Walker to Dr. Earl Peeples for an evaluation. In a letter dated May 13, 2005, Dr. Peeples concluded that he did not see evidence by current examination of a definite mechanical abnormality amenable to correction by arthroscopy. Dr. Peeples indicated that several aspects of Ms. Walker's evaluation suggest symptom

magnification. Dr. Peeples also opined that "a mild bump to the left knee," i.e., Ms. Walker's history of injury, "without torsional injury is not consistent with a traumatic origin to the lateral meniscus tear" repaired by Dr. Massanelli.

Later in 2005, Ms. Walker returned to work for a short period for Securitas Security Services and for Camden Living and Rehabilitation. Ms. Walker did not work in 2006.

After Dr. Peeples' evaluation, Ms. Walker received treatment related to her knee from the Christian Health Center and from Ouachita Valley Family Clinic at various times beginning in August of 2005. In his most recent report in the record dated May 8, 2007, Dr. Mosley summarized the claimant's knee condition as follows:

48 y/o w/f presents for follow up. Current medications are Inderal 40 mg bid, Vicoprofen once or twice a day prn pain, Ibuprofen as directed prn when not taking Vicoprofen. She has severe osteoarthritis affecting the left knee. She has seen Dr. Lipke. She has been told that she needs a total knee replacement. She's been going to the Christian Health Center every few months for a corticosteroid injection. This gives her some relief. She can't stand for very long or walk long distances at all.

The last report in the record from Kim McCord, PA-C at the Christian Health Center, states on October 5, 2006, in part:

She has severe osteo DJD and probably needs joint replacement. She has unstable knees. She has had her knees injected before but it has been some time and she comes in now just barely able to walk.

At present, Ms. Walker seeks additional temporary disability compensation beginning on March 25, 2005, and continuing to a date yet to be determined, exclusive of the periods that she worked for other employers in 2005. In addition, the claimant seeks the additional treatment that Dr. Mulhollan proposed on April 20, 2005.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a). Injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Ark. Code Ann. § 11-9-705(a)(3); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000).

The claimant's work related injury at issue is a knee injury, therefore the claimant's injury is considered a

scheduled injury. See Ark. Code Ann. §11-9-521(a). For a scheduled injury, a claimant is entitled to temporary total disability benefits until the healing period ends or until the claimant returns to work, whichever occurs first.

Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2002). The healing period continues until the injured employee is as far restored as the permanent character of the injury will permit. The healing period ends once the underlying condition has become stable and when nothing further in the way of medical treatment will improve the permanent character of the injury. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The persistence of pain is not sufficient, by itself, to extend the healing period provided that the underlying condition has stabilized. Id.

On the record before me, I find that Ms. Walker has failed to establish that the additional arthroscopic surgery proposed by Dr. Mulhollan in March and April of 2005 is reasonably necessary in 2008 (or hereafter) to treat her compensable injury for two reasons. First, I note that three orthopedists, Dr. Massanelli, Dr. Mulhollan, and Dr. Peebles, each reviewed the claimant's diagnostic studies including both MRIs. Of these three physicians, Dr.

Massanelli and Dr. Peeples both indicated that no surgical abnormality is present other than the meniscal tear which Dr. Massanelli repaired.

Dr. Mulhollan's proposal for additional surgery in March of 2005 appeared to be based at least in part on the claimant's subjective complaints, but Dr. Peeples felt in May of 2005 that the claimant engaged in symptom magnification. Coincidentally, I observed Ms. Walker engaging in what appeared to me to be rather dramatic expressions of pain and grief during the hearing in November of 2007, yet Ms. Bridges credibly testified that she observed Ms. Walker walking completely normal with no assistive device at all at a Fred's store in September of 2007. Under these circumstances, I accord greater weight to the conclusions of Massanelli and Dr. Peeples, that no surgery abnormality exists, than the weight I accord Dr. Mulhollan's March/April 2005 recommendation for additional surgery.

Second, even if exploratory knee arthroscopy to investigate questionable MRI findings and/or pain complaints might have been the appropriate course of treatment for Ms. Walker's knee in March of 2005, a finding I do not make, I point out that the claimant's medical records indicate that

Ms. Walker's knee in 2006 and 2007 (i.e., subsequent to Dr. Mulhollan's March 2005 arthroscopy recommendation) has now become afflicted with osteoarthritis so severely that her current treating physicians are discussing *total knee replacement* surgery. There is no evidence in the record indicating to me that Dr. Mulhollan would still propose exploratory arthroscopy after Ms. Walker has subsequently developed severe osteoarthritis for which her subsequent physicians are now discussing total knee replacement.

Because I find that Ms. Walker has failed to prove that the additional treatment (i.e. arthroscopy) proposed by Dr. Mulhollan in March of 2005 is reasonably necessary to treat her work-related knee injury, I find that her work-related knee injury was as far restored as the permanent nature of her injury would permit no later than March 22, 2005, when Dr. Mulhollan last examined Ms. Walker. While I recognize that Ms. Walker may require knee replacement surgery or other additional treatment for her severe osteoarthritis condition diagnosed in 2006 and 2007, Ms. Walker has not contended, nor has any physician opined, that her subsequent affliction with severe osteoarthritis diagnosed beginning in 2006 is causally related in any way to her 2004 knee bump injury at work.

Because I find that Ms. Walker's healing period for her work-related knee injury ended on March 22, 2005, her claim for additional temporary disability benefits beginning on March 25, 2005, must be denied.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employee/employer/carrier relationship existed on or about July 6, 2004.
2. The claimant sustained a compensable injury to her left knee in the form of a torn meniscus.
3. Benefits were paid with respect to the meniscus injury.
4. The respondent paid the claimant temporary total disability compensation from September 24, 2004, through January 3, 2005, at the rate of \$135 per week.
5. The claimant last worked for the respondent at light duty on March 24, 2005.
6. The claimant's 2005 earnings from Securitas Security Services were \$765.38.
7. The claimant's 2005 earnings from Camden Living and Rehabilitation were \$95.93.
8. The claimant has failed to establish by a preponderance of the evidence that the additional

surgery proposed by Dr. James Mulhollan in March and April of 2005 is reasonably necessary for treatment of her compensable knee injury.

9. The preponderance of the evidence establishes that the healing period for the claimant's compensable knee injury ended on March 22, 2005; the claimant has therefore failed to establish by a preponderance of the evidence that she is entitled to additional temporary disability compensation for her compensable injury beginning on March 25, 2005.

**ORDER**

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

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge