

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210266

SHARIE WILLIAMS, EMPLOYEE	CLAIMANT
HOLIDAY INN EXPRESS, EMPLOYER	RESPONDENT NO. 1
FIREMANS FUND INSURANCE CO., CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED SEPTEMBER 9, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on June 11, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE STEVEN R. MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents #1 represented by the HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE BRANDON CLARK, Attorney at Law, Little Rock, Arkansas. Mr. Clark's attendance was excused.

ISSUES

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, and attorney's fees.

At issue is whether or not further treatment is reasonable and necessary pursuant to Ark. Code Ann. §11-9-508, and whether or not the claimant is entitled to additional temporary total disability benefits pursuant to Ark. Code Ann. §11-9-521. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship on February 1, 1998, at which time the claimant sustained a scheduled injury at a compensation rate of \$297.00/\$223.00.

The claimant contends she remains symptomatic and wants to undergo the surgical procedure recommended by her treating physician, Dr. Martin. She also seeks payment of TTD benefits from November 1, 2007 to a date yet to be determined and attorney's fees. Furthermore, the claimant

contends that benefits have been controverted since November 4, 2002.

The respondents contend all appropriate benefits have been paid and further treatment is unreasonable and unnecessary

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires contained in the transcript.

The claimant, who was using a cane and wearing orthopaedic shoes, was the only witness to testify at the hearing.

The claimant, age 45 (D.O.B. June 10, 1963), has a high school education with 2 years of college courses. She is a licensed heating and air conditioning technician. Her work history includes 10 years of self-employment as a licensed masseuse and 4 years as an assistant chief engineer for Holiday Inn. Her health history includes a 1981 right knee injury in a motor vehicle accident (MVA), resulting in a 15% rating assessed by Dr. Mullholland. The claimant also injured her chest and left knee in a 2005 MVA for which she received a settlement.

On February 1, 1998, the claimant injured her right knee when she fell six feet through a transom trying to help a guest who had locked himself out of his motel room. (Tr. p. 8-9). She received medical treatment and continued to work for the respondent-employer for the next three years, (Tr. p. 13).

The claimant was originally seen at Medistat before coming under the care of orthopaedic specialists. She endured several knee surgeries before undergoing partial knee replacement in 2006.

1 st surgery January 1999	4% IR	Dr. Nix
2 nd surgery May 17, 2001		Dr. Martin
3 rd surgery July 8, 2005		Dr. Martin
4 th surgery December 5, 2006		Dr. Martin

The claimant stopped working for the respondent-employer in the spring of 2002. Her temporary total disability benefits ended in November, 2007 after the last surgery. The claimant explained that she made a complete recovery from her 1981 knee injury and was able to work two jobs (HVAC tech./masseuse) and play sports. Now her knee swells, pops and gives way or locks, causing her to fall. She is unable to play sports or stand for long periods of time. She uses a cane

to prevent falling and wears shoes with a coil insert to take the pressure off her knees.

The claimant is presently self-employed as a masseuse (Tr. p. 14-15). She stated she had 4 or more appointments per week. The business was not profitable and she has not paid herself any wages. The claimant only accepts cash and no business records or tax records were provided.

The claimant wishes to pursue Dr. Martin's recommended treatment, an arthroscopy "to remove possible loose body and perform debridment," (see his report of October 31, 2007).

SURVEILLANCE

The investigator sought a massage from the claimant in October 2007 and filmed the claimant in March, 2008, walking and entering a truck with no apparent difficulty. It is unknown if there is any audio as the Commission does not provide Audio on the office computers.

MEDICAL EVIDENCE

The claimant was treated conservatively by Dr. Richard Nix beginning in February, 1998. An MRI scan showed only moderate knee effusion. A differential diagnosis was traumatic focal chondromalacia or Voshell's bursitis.

The claimant apparently returned to work and was able to play softball. The carrier sent her to see Dr. David Collins in April, 1998. He diagnosed a contusion of the fat pad of the knee and prescribed anti-inflammatories and ice packs for pain. He commented, "she will continue to work in her present capacity. At the present time, there is no evidence of permanent partial impairment."

The claimant returned to Dr. Nix in June, 1998 complaining of pain around the posterior medial joint line. Repeat x-rays in August, 1998 showed a "visible external defect suggestive of blunt trauma." Dr. Nix advised her to return in November after the end of softball season. If her symptoms had not improved by then, he would perform an arthroscopy for traumatic focal chondromalacia.

The claimant told her physicians that she had a high pain threshold (Dr. Collins' report of April 10, 1998) and that her knee injury caused her to fall on occasion (see Dr. Collins' report of April 10, 1998, Dr. Nix's report of November 9, 1998 and Dr. Martin's reports of January 18, 2005,

September 12, 2007 and October 10, 2007).

In January, 1999 the carrier sent the claimant to a third physician, Dr. John Slater. His report is missing page 2, but apparently he agreed that further treatment was needed.

Dr. Nix performed arthroscopy in January, 1999, and prescribed physical therapy. The claimant returned to work on February 10, 1999. A February 3, 1999 physical therapy report indicates the purpose of the claimant's surgery was to repair a torn medial meniscus and shave the medial condyle. In his report of March 15, 2000, Dr. Nix assessed a 4% impairment rating.

The claimant returned to Dr. Nix in August, 2000 complaining of pain. A repeat MRI scan in October, 2000 showed joint effusion. She was placed on modified job duties and diagnosed with patellar tendinitis.

The claimant saw her fourth physician, Dr. Ken Martin, in April, 2001. He diagnosed post traumatic patellofemoral pain syndrome. Surgery (debridment and lateral release) was performed on May 17, 2001 revealing "significant chondral damage to the articular surface of the patella." Dr. Martin prescribed physical therapy and released her to return to work on July 16, 2001. He cautioned her against squatting, bending or climbing. A handwritten note on July 3, 2001 advises, "consider change of job." In a report dated August 16, 2001, Dr. Martin assessed a 15% rating to the lower extremity.

The claimant returned to Dr. Martin on February 13, 2002 complaining of pain for one month. The claimant did not recall any injury. She was diagnosed with "mild pes bursitis" (and) lateral pain from her previous injury."

The claimant saw Dr. Martin on August 9, 2002 with complaints of instability. His exam revealed moderate quadricep atrophy, crepitation and swelling, while x-rays showed sclerotic changes around the knee. She was diagnosed with patella chondrosis. Dr. Martin prescribed medication and physical therapy.

Dr. Martin's report of February 14, 2003 indicates the claimant suffered an onset of pain on January 31, 2003 after getting up from a seated position. She developed pain and swelling with a

sensation of something shifting or moving in her knee. Dr. Martin ordered another MRI which showed no change. In his report of April 9, 2003, Dr. Martin opined that the claimant's diagnosis of patella chondrosis was unchanged. He found no evidence of a new injury and recommended physical therapy. The claimant reported improvement in her condition and he returned her to work on May 14, 2003.

The claimant returned to Dr. Martin in November 2003 with complaints of pain. Repeat x-rays showed sclerotic changes. Dr. Martin found effusion, tenderness, and quadatrophy. He recommended physical therapy and Synvisc injections. The claimant returned in September, 2004 and Dr. Martin repeated his diagnosis and treatment.

In January, 2005, the claimant returned to Dr. Martin reporting that her knee had given way, causing her to fall. Repeat x-rays showed "mild narrowing of the medial joint space with some sclerosis on the subchondral bone of the medial tibial plateau and also around the patella."

The claimant returned to Dr. Martin in March, 2005 with catching and "significant" maltracking of the knee. Another MRI scan taken April 25, 2005, was interpreted as showing "chondromalacia involving the patellofemoral compartment. There are also some changes consistent with a meniscal abnormality which may be secondary to an old surgery."

On July 8, 2005 Dr. Martin performed surgery on the claimant's knee to repair a torn meniscus due to a re-injury. Follow-up reports show the claimant was treated with medications and injections and he released her to return to work on December 15, 2005.

In May, 2006, the claimant returned to Dr. Martin complaining of severe pain, using a cane, and unable to work. Dr. Martin recommended surgery which the carrier denied, (see his reports of August 17, 2005, December 15, 2005, May 15, 2006, July 28, 2006, October 18, 2006).

The claimant saw her fifth physician, Dr. John Wilson on October 31, 2006. Dr. Wilson answered several questions posed by the carrier, but essentially, Dr. Wilson agreed with Dr. Martin. Dr. Wilson noted that the claimant had no problems between 1981, (after the MVA) and 1998, (the injury with Holiday Inn).

The claimant returned to Dr. Martin in December, 2006 and knee replacement surgery was performed on December 5, 2006 for post-traumatic arthritis of the right knee. She was released for light duty on September 12, 2007. She was advised to ice her knee three times a day, perform home exercises, and avoid climbing, kneeling, squatting or prolonged standing or walking.

On October 31, 2007, the claimant returned to Dr. Martin with complaints of popping, burning, a sensation of something loose in the knee. She was using a cane. Dr. Martin recommended arthroscopy “to remove possible loose body and perform some debridement.”

FINDINGS & CONCLUSIONS

The respondents have denied this claim, contending additional medical treatment is unreasonable and unnecessary.

Employers must promptly provide medical services which are “reasonably necessary in connection with” the compensable injuries. Ark. Code Ann. §11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Commission opinion February 14, 2003 (E906565). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers’ Compensation Commission, December 13, 1989 (Claim No. D511255).

Although this is a compensable claim, I note the respondents have controverted this case in the past on the issue of additional medical treatment. They have also sent the claimant to a different

doctor every time a procedure was recommended. No less than 5 different physicians have recommended treatment for the claimant's compensable knee injury over the past 10 years. All of the physicians have opined the treatment is causally related to the compensable injury. The claimant has a partial knee replacement that will require, at a minimum, monitoring by a physician because of the need for a revision in 10-20 years (see Dr. Martin's report of September 12, 2007). There is no evidence of an independent intervening event breaking the chain of liability. Therefore, the respondents remain liable for the claimant's medical care. The recommendation for an arthroscopy was made by the claimant's treating and operating physician, Dr. Martin, whose opinion is entitled to great weight. I find additional medical treatment, specifically an arthroscopy, is reasonable and necessary medical treatment for the compensable knee injury.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on February 1, 1998 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$297.00/\$223.00.
2. The claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary based on her diagnosis, history of falls, partial knee replacement, symptoms, and opinion of her treating physician.
3. The respondents are directed to pay medical expenses within thirty days of receipt pursuant to Rule 30.
4. The respondents are directed to pay temporary total disability benefits from November 1, 2007 to a date yet to be determined as the claimant remains in her healing period and has not returned to work.
5. This claim has been controverted and the claimant's counsel is entitled to the maximum attorney's fees to be paid in accordance with A.C.A. §11-9-715, §11-9-801, and WCC Rule 10.

Pursuant to the Full Commission decisions of Coleman v. Holiday Inn, (November 21,1990) (D708577), and Chamness v. Superior Industries, (March 5, 1992)(E019760), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by

the respondent, directly to the claimant's attorney.

As a reminder, Ark. Code Ann. §11-9-715 was amended by Act 1281 of 2001, limiting attorney's fees on medical benefits and services for injuries after July 1, 2001.

AWARD

Respondents are directed to pay benefits in accordance with the Findings of Fact 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 A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (Ark. Ct. App. 1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998), 336 S.W. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge

Entered Nunc Pro Tunc September 11, 2008