

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F008439

SHEILA LONG,
EMPLOYEE

CLAIMANT

L & J MECHANICAL,
EMPLOYER

RESPONDENT

AMERICAN INTERSTATE INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 30, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE MARK A. PEOPLES, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE MIKE RYBURN, Attorney
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed in part
and reversed in part.

OPINION AND ORDER

The claimant appeals an Administrative Law Judge's
opinion filed March 21, 2003. The Administrative Law Judge
found that the claimant's compensable left knee injury
caused the claimant to fall in July 2001, "which
necessitated medical treatment for claimant's right knee."
However, the Administrative Law Judge found that the
claimant failed to prove "that the objective medical
findings in her right knee are causally related to
claimant's fall in July of 2001." The ALJ found that the
claimant failed to prove she sustained a compensable injury
to her back on May 14, 2000. The claimant also failed to

prove "that her back condition is a compensable consequence of her May 14, 2000, injury."

After reviewing the entire record *de novo*, the Full Commission affirms in part and reverses in part the opinion of the Administrative Law Judge. The Full Commission affirms the ALJ's finding that the claimant failed to prove she sustained a compensable injury to her back, and that the claimant failed to prove that her back condition was a compensable consequence of her May 14, 2000 injury. We reverse the ALJ's finding that the claimant failed to prove that her right knee condition was a compensable consequence of the left knee injury.

I. HISTORY

Sheila Long, age 48, testified that she had been employed as a registered nurse for L&J Mechanical. The parties stipulated that Ms. Long sustained a compensable injury to her left knee on May 14, 2000. She testified, "I was climbing a ladder to ascertain its safety and make sure it was securely fastened, and as it turned out it was not. When I got to the top, it swung out; the bolt was not securely fastened. It swung out, in an effort to not just fall 12 feet on the concrete I held on and banged my left elbow and my left knee on most of the rungs coming down."

The parties stipulated that the respondent-employer provided reasonably necessary medical treatment in connection with the claimant's compensable left knee injury. The claimant testified that she had also experienced trouble with her back, which she said had "developed progressively since the original injury in May."

The claimant testified that she continued to work until November 15, 2000, and that she was taken off work in order to undergo surgery for her left knee. The claimant testified that she did not return to work for any employer after that time, and that the respondents had not offered her any work.

The claimant testified that she fell at home in July 2000, but the record indicates that this incident actually occurred in July 2001. The claimant testified, "I was going downstairs in the house that I live in, took a couple of steps and the left knee just - it does this often, it just goes away....It completely gave way. In an effort to protect the injured left knee, I thought that I had broken my right leg by the time I got to the bottom of the stairs." The claimant testified, "I laid at the foot of the stairs for quite some time and continually assessed the leg, and decided that it was not in fact broken, but that there was something definitely wrong." The claimant testified that

she contacted the respondent-carrier's claims adjuster that day, and that the adjuster would not authorize medical treatment for the claimant's right knee.

The record indicates that the claimant received emergency treatment on July 11, 2001. The claimant's history indicated that she had fallen at home after her "L knee gave out." The claimant complained of pain in her neck, right shoulder, and knee. A Radiology Report was entered on July 11, 2001:

RIGHT KNEE, TWO VIEWS:

There is no fracture or other significant abnormality. If symptoms persist, additional studies should be considered.

A physician assigned a work/activity status of "No prolonged standing or walking." "Ice, elevation" was instructed. The discharge diagnosis was "contusion R knee; strain R shoulder."

The record contains correspondence dated January 29, 2002 from the respondent-carrier to Dr. David Bullis:

Thank you for your medical report of January 16, 2002. This reports (sic) states that Ms. Long has been released from your care for her on the job injury. Please advise the percentage of impairment, if any, Ms. Long has sustained to her knee as a result of this injury.

Dr. Bullis wrote on the correspondence that the claimant's estimated impairment was 8% whole body, 20% to the knee, "based on cartilage damage." The parties

stipulated that the respondents accepted a 20% impairment rating to the claimant's left lower extremity.

The respondents' attorney indicated at hearing that temporary total disability compensation had apparently been paid through February 7, 2002.

Dr. Bullis reported on March 13, 2002:

She is still having some problems with anterior knee pain on the left. She also notes an injury that she sustained back in July. She injured her right knee when she fell down some stairs because of her left knee. At that time, x-rays of her knee were normal. However, she had a Grade 2 posterior cruciate ligament tear.

Physical Exam Repeat exam shows no effusion on the right. She has a full range of motion with a Grade 2 posterior drawer. Negative Lachman. No varus or valgus instability.

Her left knee has been giving her problems, primarily with stairs. She has no effusion....She has 1+ crepitation on range of motion. She has no varus or valgus instability....

Dr. Bullis' impression was "Anterior knee pain," and he recommended conservative treatment.

Dr. James Leffers examined the claimant's right knee on April 18, 2002 and noted "an effusion that is moderate....There is no crepitus. I am not x-raying the knee today." Dr. Leffers stated, "Synovitis right knee, etiology undetermined."

Dr. Bullis again saw the claimant on May 9, 2002:

She is having problems with her right knee. She injured this knee when she fell down some stairs

pre-operatively apparently back in July. She had gone to the E.R. at that time. I had seen her, I believe, on 8/31/01. I neglected to dictate anything on her at that time, but I had diagnosed a posterior cruciate ligament tear, Grade 2. She fell down the stairs when her left knee, which is the knee we were operating on, gave out on her. At any rate, we were treating her right knee conservatively, as she was not having any significant instability with it. However, she was here and saw Dr. Leffers a couple of weeks ago with a severe knee effusion. She is here today for evaluation of the right knee.

Dr. Bullis' physical examination showed "a tense effusion in the right knee." Dr. Bullis' impression was "Grade 2 PCL injury with subsequent chondrosis of the patellofemoral joint." Dr. Bullis planned to aspirate the claimant's knee and inject cortisone, and he wrote, "She will be disabled from work for 1 month."

The claimant testified that her back pain "got much, much worse after the second injury in July of 2001, and it's simply because of the way I walk. The altered gait requires different muscles, and I have back spasms, pain, headaches, hip pain ... it's just a cascading series of symptoms." Dr. Bullis wrote on July 19, 2002, "I am referring Ms. Sheila Long to the pain management center located at St. Anne's Hospital. She is being treated for continued bilateral knee and back pain, all of which are of a chronic nature." The claimant testified that she had treated at St. Anne's for

pain management, but that the carrier had denied payment for this treatment.

Dr. Bullis wrote to the respondents' attorney on July 31, 2002:

In regard to Sheila Long, she was referred to me with a chondral lesion on her left knee. I initially saw her on 6/28/01. Prior to that, she had two surgeries done by Dr. Leffers on that left knee including an arthroscopy and debridement and then a removal of a bone fragment that was connected to the patella. I did a cartilage transplant procedure on her in September of 2001. Prior to that, she had fallen down the stairs, as she states the left knee gave out on her which could happen because of pain. X-rays at that time were normal, however, she had a grade II posterior drawer indicating damage to the posterior cruciate ligament of her right knee. Since that time, she has had problems with persistent pain and swelling of the right knee. This right knee condition would be considered a posttraumatic problem. She has mentioned back problems to me and is seeing a chiropractor for that.

The answer to your final question; Did Mrs. Long mention the July of 2001 incident prior to March of 2002? The answer is that she did mention it when she was here in August and had been evaluated in the emergency room and thought initially to be of minor concern. This right knee, however, has not quieted down for her and is the source of her present problems.

Dr. Bullis reported the following history on September 6, 2002:

Sheila had an episode in a store on Wednesday where her left knee gave out. She went to the E.R. where x-rays were negative. She was placed in a knee immobilizer and asked to follow-up here.

Physical Examination: On exam, she has essentially no effusion on either knee. She has some lateral facet tenderness, no medial facet tenderness. No significant joint line pain, negative McMurray, no varus or valgus instability. Her right knee shows no effusion, again, some mild lateral facet tenderness, no joint line pain. She has a grade I to II posterior drawer.

Impression: Status-post left knee instability episode. Her knee exam looks very nice today.

Plan: She is going to work on decreasing the patellofemoral inflammation with stretches and icing. She has an appointment with the pain clinic today and her right knee effusion is much improved. Overall, both knees look better today. We will see her back as needed.

Dr. Rajiv Nehra, D.C., wrote to the claimant's attorney on September 16, 2002:

Ms. Sheila Long-Farias is a 48 year old female that is not currently working at this time in order to prevent further exacerbations. On May 14, 2000, while at work, she fell from a ladder and landed on her lower torso and leg. Furthermore, the fall from approximately twelve feet also effected her right knee. Instability within her skeletal spine and lower right extremity continued for several months. Unfortunately, on July 11, 2001, she newly injured her right knee. She claims her left knee just "crashed-out" and "cracked" due to the right knee exclusively supporting her upper torso for close to one year. This left her in a predicament of bilateral knee pain and instability. She was seen on three occasions by an orthopedic surgeon for evaluation and surgical treatment of her condition....

Ms. Sheila Long-Farias has suffered an acute traumatic spinal acceleration/deceleration injury which has resulted in the following: vertebroaxial displacement, myofascial and ligamentous tear, facet and disc joint inflammation, nerve root irritation, myospasms and myofascitis....

Dr. Nehra indicated that he had diagnosed "lumbar/sacral sprain/strain," "Thoracic sprain/strain," "Cervical sprain/strain," "Ligamentous instability to entire skeletal spine," and "Bilateral knee sprain/strain." Dr. Nehra further wrote:

Diagnostic images were obtained of patient's lumbar spine. There was no evidence of osseous pathology, acute fracture, or severe dislocation within skeletal spine. Adequate bone density throughout skeletal spine. Cortical margins are intact, however; there was indication of slight osteophytic changes to lower lumbar region. Slight changes within the bio-mechanics of the skeletal spine in both the A-P and lateral curve. Decreased disc space to lower lumbar region and at L5/S1 motor unit....

Dr. Nehra stated, "it is my professional opinion that Ms. Sheila Long-Farias has reached maximal chiropractic improvement. And although asymptatology has been reached at this time, symptoms may remain dormant for some period of time only to resume through insidious onset."

Ms. Long claimed entitlement to additional worker's compensation. The claimant contended that she fell in July 2001 "when her left knee gave out. The fall was a direct result of her left knee injury." The claimant contended that she injured her right knee as a result of the fall, and that the respondents had controverted medical treatment for same. The claimant contended that "As a result of her knee injuries, claimant has developed an altered gait which is

now causing pain and discomfort in her back. Claimant contends that her back problems are related to her knee injuries and that she is entitled to treatment and benefits related to her back problems." The claimant contended that she was entitled to additional temporary total disability compensation. The claimant contended that she remained in a healing period for her left knee injury, whether or not she was entitled to benefits for her right knee and/or back. The claimant contended that pain management as recommended by Dr. Bullis was reasonably necessary.

The respondents contended that the claimant had received all benefits for which she was entitled with regard to the compensable left knee injury. The respondents contended that the claimant had reached the end of her healing period for the left knee injury. The respondents contended that the claimant's right knee and back problems were not causally related to her compensable left knee injury. The respondents contended that the claimant had not established a compensable injury to her right knee and/or back with objective medical findings.

Meanwhile, an MRI of the claimant's left knee was performed at Arkansas Knee Clinic on January 28, 2003, with the following impression:

1. Small undersurface tear of the body of the medial meniscus.

2. Probable small undersurface tear of the body of the lateral meniscus.
3. ACL and PCL laxity with no tears demonstrated.
4. Osteochondral lesions of the medial and lateral femoral condyles. The latter has a deep cortical defect continuing a loose fragment.
5. Diffuse moderate to severe hyaline cartilage loss at all articulations.
6. Small effusion.

An MRI of the claimant's right knee was also taken on January 28, 2003:

1. Changes of the body of the medial meniscus could be due to previous surgical debridement. However, a small complex tear is suspected here.
2. Redundant posterior cruciate ligament with signal change. The appearance is compatible with a diffuse tear. However, no full-thickness injury or avulsion is demonstrated.
3. Chondromalacia involves all compartments.
4. Joint effusion.

A hearing before the Commission was held on January 29, 2003. The parties indicated at hearing that the claimant had undergone an evaluation with Dr. James S. Mulhollan. The claimant testified that she had experienced trouble with her right knee since the July 2001 fall at home. The claimant described pain, weakness, swelling, instability of the joint, and inability to sustain weight-bearing. Regarding use of a cane, the claimant testified, "I don't have to have the cane in order to walk. I have to have it in order not to fall, because both knees are relatively unstable and weak. I have fallen enough times that it doesn't even embarrass me any more. But, I use the cane

just to catch myself if one of them does fail to support me."

Dr. Mulhollan wrote to the respondent-carrier on February 11, 2003:

As you know, I did an evaluation on Sheila Long, age 48, in my office on January 28. She came in at the request of Mr. Michael Ryburn.

The patient was employed by L&J Mechanical as an R.N. She fell off of a ladder on May 14, 2000. She was subsequently told that she had a patellar fracture. She had an open surgical procedure for it in November, 2000. In February, 2001, she underwent surgery for removal of cartilage. She was told that she needed a cartilage implant. On September 11, 2001, she had an osteochondral transplant. It did not work, and the patient ended up with significant knee pain. She had been undergoing treatment for pain management. She had gradually gained about 40 lbs from the moment of the injury until now. She told me that she "battles depression" because her son died at age 16. She was also in a high speed motor vehicle accident in 1999 and had a left hip prosthesis. On July 11, 2001, she fell down some steps because her left knee gave way. She was seen by an orthopedic surgeon, who told her that she had a transected PCL. Since that time, her knee had swelled all of the time and "feels like a toothache." It "always hurts." She had not had right knee surgery.

Radiographically, the patient had bilateral varus degeneration. The right knee was slightly worse than the left knee. In my own opinion, the grades were 3+ and 2+, respectively.

An MRI of each knee was obtained. Copies of both MRIs are included.

It is my opinion that the patient needs to have bilateral arthroscopies. Of course, those can be performed as simultaneous procedures. I think the prognosis for this patient is guarded because of

her weight and depression. At the same time, the MRIs suggest surgical pathology, and without arthroscopy there is no way to exclude it.

The patient had a plane reservation to fly home on Thursday, February 13. Priceline would not change her reservation. I told the patient that I would simply send her a copy of this report and copies of the MRIs.

Dr. Mulhollan reported on February 13, 2003:

Following my dictation on Sheila Long, she called our office to tell us that she had changed her airline reservation and wanted to have surgery. We went ahead with it on February 12.

The findings were rather complicated. In each knee, there was an articular surface lesion on the femoral trochlea. In each case, it was quite deep, down to bare bone, and flap-like to some extent. In the left knee, there was a large flap of articular surface on the weight bearing part of the medial femoral condyle. I was able to see the medial meniscus very well and simply did not believe it was torn. There was a degenerative tear of the outer meniscus, so the surgical manipulation consisted of debridement of the medial femoral condyle and the trochlea plus lateral meniscectomy. In the right knee, besides the trochlear defect, there was a torn medial meniscus, which was removed....

Dr. Mulhollan authored the last medical report of record, dated February 18, 2003:

Sheila Long was rechecked by me on February 18. She is basically doing OK. Her knee gave way this morning. She has wisely decided to use a cane, which will effectively block that. Her exercise performance is satisfactory. I gave the patient some Bextra samples. If they prove to be effective, her family doctor can probably prescribe some additional medication. We talked about how to regain activity after bilateral knee surgery.

She will call me in a month or two and give me a status report. I will let you know.

The Administrative Law Judge filed an opinion on March 21, 2003. The ALJ found that the claimant's compensable left knee injury caused the claimant to fall at home in July 2001, "which necessitated medical treatment for claimant's right knee." The ALJ found that the record revealed objective medical findings in the claimant's right knee, but "Claimant has failed to prove by a preponderance of the evidence that the objective medical findings in her right knee are causally related to claimant's fall in July of 2001." The ALJ found that the claimant failed to prove that she sustained a compensable injury to her back on May 14, 2000, and the claimant failed to prove "that her back condition is a compensable consequence of her May 14, 2000, injury."

The Administrative Law Judge found that "As of the date of the hearing, claimant's healing period for her compensable left knee injury had ended." The ALJ found that the claimant failed to prove that pain management as recommended by Dr. Bullis was reasonably necessary in connection with the claimant's compensable left knee injury. The ALJ therefore denied and dismissed the claim for additional benefits; claimant appeals to the Full Commission.

II. ADJUDICATIONA. Compensability for the claimant's knees

The claimant contends that she sustained an injury to her right knee as a compensable consequence of the compensable injury to the claimant's left knee. Causal connection is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. Osmose Wood Preserving v. Jones, 40 Ark. App. 190, 843 S.W.2d 875 (1992). The determination of whether a causal connection exists is a question of fact for the Commission. Jeter v. B.R. McGinty Mechanical, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Air Compressor Equip. v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000). In addition, there must be objective findings of a compensable consequence. Barnes v. Alma School District, Workers' Compensation Commission E711749 & E905201 (July 3, 2000); Atchison v. John P. Marinoni Construction Company, Workers' Compensation Commission E616344 (Sept. 19, 2001).

In the present matter, the Full Commission finds that the claimant proved by a preponderance of the evidence that her right knee condition was a compensable consequence of the compensable left knee injury. The parties stipulated

that the claimant sustained a compensable injury to her left knee on May 14, 2000. The claimant, who the Administrative Law Judge determined was a credible witness, testified that she fell 12 feet from a ladder. The respondents initially provided medical treatment in connection with the injury. The claimant underwent surgery for her left knee on or about November 15, 2000. In July 2001, the claimant's left knee "gave way" at home, and she fell down a stairway. An emergency medical record corroborates the claimant's testimony. Although an x-ray on July 11, 2001 showed no bony injury, a physician discharged the claimant with a diagnosis of "contusion R knee." A physician's diagnosis of "contusion" can constitute an objective medical finding establishing a compensable injury. Bryant v. Staffmark, Inc., 76 Ark. App. 64, 61 S.W.3d 856 (2001); Meister v. Safety Kleen, 339 Ark. 91, 3 S.W.3d 320 (1999).

Dr. Bullis reported in January 2002 that there had been cartilage damage to the claimant's left knee. Dr. Bullis reported in March 2002 that, at the time of the July 2001 injury, the claimant "had a Grade 2 posterior cruciate ligament tear." Dr. Bullis appears to have been referring to the right knee. This was of course another objective medical finding, and the Full Commission finds that this tear was causally related to the July 2001 fall. In May

2002, Dr. Bullis physically examined the claimant and described a "tense effusion in the right knee." "Effusion" in the knee is an objective finding. Roberts v. Baxter International, Workers' Compensation Commission E714829 (April 12, 2001); Stone v. Aztec Paving and Heavy Construction, Inc., Workers' Compensation Commission E807346 (March 2, 2000); Thompson v. Cavanaugh Motors, Workers' Compensation Commission E505961 (Sept. 11, 1996). Dr. Bullis reported bilateral knee pain in July 2002. Dr. Bullis described a "chondral lesion" in the claimant's left knee on July 31, 2002.

The record therefore contains a number of objective medical findings establishing injuries to the claimant's left and right knees. Dr. Bullis described the claimant's right knee condition as "post-traumatic." Objective findings can also be located in Dr. Mulhollan's January 2003 diagnostic reports and February 2003 surgical report. A left-knee MRI on January 28, 2003 showed, among other things, cartilage loss and effusion. An MRI of the right knee on that date showed, among other things, a meniscal tear and joint effusion. Dr. Mulhollan opined that the claimant's prior surgeries had been unsuccessful, and that the MRI reports suggested surgical pathology. Dr. Mulhollan performed surgery on February 13, 2003 and found an

"articular surface lesion" in each knee. Dr. Mulhollan did not alter his earlier opinion that the claimant suffered from a surgical pathology.

The Administrative Law Judge determined that compensability of Dr. Mulhollan's February 2003 surgery was not an issue, yet the ALJ relied in part on Dr. Mulhollan's report to deny the claim. The ALJ essentially concluded that Dr. Mulhollan's findings and other medical evidence did not indicate a traumatic injury, but rather a degenerative condition. Based on the Full Commission's *de novo* review of the entire record, the ALJ's conclusion in this regard is based on conjecture and speculation. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Dr. Mulhollan certainly did not describe the claimant's badly damaged knees as resulting from "degeneration," although clearly some degenerative elements were present. The Full Commission finds that the claimant proved by a preponderance of the evidence that her right knee condition was a compensable consequence of her left knee injury. We find that the claimant proved she was entitled to reasonably necessary medical treatment provided in connection with both knees, including the surgery provided by Dr. Mulhollan.

B. Temporary total disability

1. Left knee

An employee with a scheduled injury is entitled to temporary total disability compensation during the time that she remains within her healing period and has not returned to work. Ark. Code Ann. § 11-9-521(a); Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The Administrative Law Judge found in the present matter that, "As of the date of the hearing, claimant's healing period for her compensable left knee injury had ended." The claimant sustained a compensable injury to her left knee on May 14, 2000. The claimant testified that she continued to work until November 15, 2000, taking off work to undergo left knee surgery. Dr. Bullis assigned an anatomical impairment rating on or about January 29, 2002, which is evidence indicating that a healing period for the claimant's left knee injury ended at that time. Pilkington v. The Children's Center, Workers' Compensation Commission E904624 & E906080 (Aug. 28, 2002), citing Johnson v. General Dynamics, 46 Ark. App. 188, 878 S.W.2d 411 (1994).

The claimant has not disputed the respondents' assertion that temporary total disability compensation was actually paid through February 7, 2002. The claimant did not return to work, and she testified that the respondent-

employer did not offer her work. However, temporary disability cannot be awarded after the healing period has ended. Trader v. Single Source Transportation, E507484 (Feb. 12, 1999). The Full Commission therefore finds that the claimant proved she was entitled to a period of temporary total disability compensation for her left knee from November 15, 2000 through January 29, 2002.

Dr. Mulhollan began treating the claimant on January 28, 2003. An MRI on that date showed meniscal tears, lesions, and cartilage loss in the claimant's left knee, along with other objective medical findings. Dr. Mulhollan performed bilateral knee surgery on February 12, 2003. The Full Commission finds that the claimant re-entered a healing period on February 12, 2003, when Dr. Mulhollan operated on the claimant's left knee. The claimant therefore proved she was entitled to additional temporary total disability beginning on February 12, 2003 until a date to be determined.

2. Right knee

The claimant sustained a compensable injury to her left knee on May 14, 2000, and testified that she had been off work since November 15, 2000. The claimant's injured left knee "gave out" on or about July 11, 2001, and as a result the claimant fell and injured her right knee. The claimant

was diagnosed with "contusion right knee," and she was assigned a work/activity status of "No prolonged walking or standing." The claimant was also instructed to ice and elevate her knee. The record does not show that this medical restriction was ever lifted. The Full Commission therefore finds that the claimant proved she was entitled to temporary total disability compensation for her right knee beginning on July 11, 2001. We recognize that the respondents were already paying temporary disability for the claimant's left knee through February 7, 2002, so that there would be overlap, and that temporary total disability compensation with regard to the claimant's right knee would effectively begin on or about February 7, 2002.

Dr. Bullis' March 2002 and May 2002 reports indicate that the claimant had sustained a ligament tear on the right in July 2001. It appears that Dr. Bullis performed surgery in May 2002, taking the claimant off work beginning May 9, 2002. Dr. Bullis reported on September 6, 2002 that "both knees look better today." Whether an employee's healing period has ended is a factual determination to be made by the Commission. Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995). The record in the present matter shows that the claimant reached the end of a healing period for her right knee no later than September 6, 2002.

The Full Commission finds that the claimant proved she was entitled to temporary total disability compensation for her right knee from July 11, 2001 through September 6, 2002.

The claimant began treating at Arkansas Knee Clinic on January 28, 2003. MRI of the right knee showed a suspected tear and joint effusion, among other findings. Dr. Mulhollan performed bilateral knee surgery on February 12, 2003. Dr. Mulhollan found a deep lesion and a torn meniscus in the claimant's right knee. The Full Commission finds that the claimant entered another healing period with regard to her right knee beginning February 12, 2003. The claimant therefore proved she was entitled to additional temporary total disability compensation for her right knee from February 12, 2003 until a date yet to be determined.

C. Back

The Administrative Law Judge found that the claimant failed to prove a compensable injury to her back on May 14, 2000. The ALJ also found that the claimant failed to prove that her back condition was a compensable consequence of the May 14, 2000 injury to the claimant's left knee. The Full Commission affirms these findings. The record does not show that the claimant injured her back when she fell on May 14, 2000. The record does not show that the claimant injured her back when she fell and hurt her knee in July

2001. The claimant complained of pain in her neck, right shoulder, and knee, and there was no diagnosis of a back injury. It is true that Dr. Bullis referred the claimant for pain management related to her knees and back in July 2002, but Dr. Bullis never reported a back injury. Nor does the evidence show such an injury or a compensable consequence to the claimant's back resulting from "altered gait." The Full Commission agrees with the ALJ that Dr. Nehra's report is entitled to no weight. The Commission may rely on a chiropractor's report for objective medical findings. Kirsch v. Pulaski County Special School District, Workers' Compensation Commission E516059 (March 5, 1998). In the present matter, however, the record does not support Dr. Nehra's description of "instability within her skeletal spine," "vertebroaxial displacement," "myospasms," and so on. Dr. Nehra acknowledged that objective diagnostic testing of the claimant's spine essentially showed no pathology. There was "decreased disc space" in the lumbar region, but the record does not indicate that this degenerative finding was caused by altered gait. We note that no other treating physician reported any abnormalities in the claimant's spine. Dr. Nehra also found, with no support of record, that the claimant had injured her cervical, thoracic, and lumbar spine. The Full Commission

affirms the Administrative Law Judge's findings with regard to the claimant's back.

D. Pain management

The Administrative Law Judge found, "Claimant has failed to prove by a preponderance of the evidence that pain management as recommended by Dr. David Bullis is reasonably necessary, and related to claimant's compensable left knee injury." The ALJ was "unable to determine that the pain complaints are related to claimant's compensable injury and not to the degenerative process." The Full Commission does not affirm this finding. The claimant correctly states on appeal that medical treatment rendered in connection with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment. Haskins v. TEC, Workers' Compensation Commission E107391 (July 14, 1993). The preponderance of evidence shows that the claimant proved she was entitled to continued pain management for her compensable bilateral knee condition. This is especially true when the Commission considers the bilateral knee surgery the claimant underwent in February 2003. The Full Commission therefore finds that the claimant proved she was entitled to pain management for her knees as recommended by the treating physician. The respondents are

not liable for any pain management related to the claimant's back.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved by a preponderance of the evidence that her right knee condition was a compensable consequence of her compensable left knee injury. The claimant proved she was entitled to reasonably necessary medical treatment provided in connection with both knees, including Dr. Mulholland's surgery. The claimant proved she was entitled to pain management rendered in connection with her compensable bilateral knee condition. The claimant failed to prove that she sustained a compensable back injury, or that she was entitled to pain management for her back. The claimant proved she was entitled to temporary total disability compensation for her left knee from November 15, 2000 through January 29, 2002, and from February 12, 2003 until a date to be determined. The claimant proved she was entitled to temporary disability for her right knee from July 11, 2001 through September 6, 2002, and from February 12, 2002 until a date to be determined. The Full Commission therefore affirms in part and reverses in part the opinion of the Administrative Law Judge.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

_____ For the following reasons, I respectfully concur in part and dissent in part from the principal opinion. Specifically, I concur in the principal opinion's reversal of the Administrative Law Judge's finding that claimant failed to prove that her right knee injury is a compensable consequence of her admittedly compensable May 14, 2000 left

knee injury. I also concur in the principal opinion's finding that the claimant is entitled to temporary total disability benefits in relation to her left knee from November 15, 2000 through January 29, 2002, and from February 12, 2003 until a date yet to be determined. I also concur in the principal opinion's finding that the claimant is entitled to temporary total disability benefits for her right knee injury from July 11, 2001 through September 6, 2002, and from February 12, 2003 until a date yet to be determined. Finally, I concur in the principal opinion's finding that claimant is entitled to reasonably necessary medical treatment in relation to her left and right knee injuries, including pain management as recommended by Dr. Bullis, and Dr. Mullholan's February 12, 2003 surgery. However, I must respectfully dissent from the principal opinion's finding that the claimant failed to prove that she suffered a back injury as a compensable consequence of her May 14, 2000 compensable left knee injury. I must also respectfully dissent from the principal opinion's finding that the claimant's healing period for her right knee ended on September 6, 2002, and resumed on February 12, 2003, such that the claimant is not entitled to temporary total disability benefits from September 6, 2002 to February 12, 2003.

I. Compensability of Right Knee Injury

With regard to whether the claimant proved that her right knee injury was a compensable consequence of her compensable left knee injury, I would initially note that there is no dispute that the claimant has met her burden of proving the existence of injury to her knee with evidence of objective medical findings. The courts have held that the objective medical findings requirement of A.C.A. §11-9-102(4)(D) does not apply to the causation element of compensability. Wal-Mart Stores, Inc.v.VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999); Stephens Truck Lines v. Millican, 58 Ark.App. 275, 950 S.W.2d 472 (1997). There is ample evidence of objective medical findings of injury to the claimant's right knee, including a torn medial meniscus observed and repaired by Dr. Mulhollan during his February 13, 2003 arthroscopy, and a torn posterior cruciate ligament revealed on a January 28, 2003 MRI. Therefore, the only issue in this case with regard to the claimant's right knee problems is whether these objectively identified injuries in claimant's right knee are causally related to the fall the claimant took down the stairs in July 2001.

Even conceding solely for purpose of argument that claimant produced no medical opinion evidence as to the cause of her right knee problems, I find that the totality

of the non-medical evidence in the record indicates that she established the requisite causal connection between the July 2001 fall and her right knee problems. Quite simply, the claimant's history of right knee problems indicates that the problems began in July 2001, when she experienced the fall, and persisted from that date. There is absolutely no medical evidence in the record which indicates that the claimant ever experienced right knee difficulties prior to the July 2001 fall. These facts standing alone are, in my opinion, sufficient to establish the requisite causal connection. In light of the holdings of Millican and VanWagner, the claimant has clearly, in my opinion, met her burden of proving a causal connection between the July 2001 fall and her subsequent right knee problems. The medical evidence indicates that all of the objective medical findings made with regard to claimant's right knee are consistent with having occurred as a result of the fall. In light of the claimant's history of injury, the most likely cause of these findings is, in my opinion, the July 2001 fall.

Moreover, my review of the medical evidence in this case reveals that, unlike the claimants in Millican and VanWagner, the claimant did in fact produce competent medical opinion evidence on the issue of causation, at least

as to her cruciate ligament tear. The claimant was examined by Dr. David Bullis in August 31, 2001, and Dr. Bullis opined that claimant suffered from a Grade 2 posterior cruciate ligament tear. It is clear from Dr. Bullis' clinic note that he made this diagnosis based upon the "Drawer" test. *CX1*, p. 6. Dr. Bullis stated in a letter dated July 31, 2002 as follows:

...X-rays at that time were normal, however, she had a grade II posterior drawer indicating damage to the posterior cruciate ligament of her right knee. Since that time, she has had problems with persistent pain and swelling of the right knee. *This right knee condition would be considered a posttraumatic problem....*

The answer to your final question; Did Mrs. Long mention the July of 2001 incident prior to March of 2002? The answer is that she did mention it when she was here in August and had been evaluated in the emergency room and though initially to be of minor concern. This right knee, however, has not quieted down for her and is the source of her present problems.

CX1, p. 9 (emphasis added). I find that this statement by Dr. Bullis clearly indicates that he believed the claimant's right knee difficulties were due to a posterior cruciate ligament tear. Furthermore, while there is no evidence in the record as to the nature of the "Drawer" test, my research indicates that the findings of this test cannot come under the voluntary control of the patient, and thus

that they constitute objective medical findings under A.C.A. §11-9-102(4)(D). Dr. Bullis stated that the claimant had a positive drawer "sign." *Stedman's Medical Dictionary* defines a "sign" as "any abnormality indicative of disease, discoverable on examination of the patient; an objective symptom of disease, in contrast to a symptom which is a subjective s. of disease." *Stedman's* further defines the drawer sign as "in a knee examination, the forward or backward sliding of the tibia indicating laxity or tear of the anterior (forward slide) or posterior (backward slide) cruciate ligaments of the knee." I find that the nature of the "drawer" test is such that the examiner does not rely in any way upon any voluntary feedback from the patient, and thus that its results do not come under the voluntary control of the patient.

Furthermore, the claimant subsequently underwent an MRI of her right knee on January 28, 2003. The radiologist's report of this MRI clearly makes findings "compatible with a diffuse tear" of the posterior cruciate ligament. "*Blueback*" Exhibit, p. 5. I find that this MRI report corroborates Dr. Bullis' diagnosis of a torn posterior cruciate ligament tear via the "drawer" test. Therefore, I find that there is convincing medical opinion evidence in the record that at least the objectively

identified cruciate ligament tear was caused by the claimant's July 2001 fall.

Furthermore, I find nothing in Dr. Mullholan's very brief report of the surgical procedure he performed on February 12, 2003 to in any way contradict the medical opinion of Dr. Bullis or the MRI radiologist that the claimant suffered from a torn posterior cruciate ligament tear. Dr. Mullholan's report is completely silent on the condition of the claimant's right knee cruciate ligament. I do not find this silence to support a conclusion that in fact, the claimant's cruciate ligament was not torn. Instead of indicating that Dr. Mullholan observed a normal cruciate ligament in the right knee, I find it equally plausible that his silence indicates either that he did not even look at claimant's cruciate ligament during surgery or that he simply failed to address the condition of the claimant's cruciate ligament in his report.

For these reasons, I concur in the principal opinion's finding that claimant proved by a preponderance of the evidence that her right knee injury is a compensable consequence of her admittedly compensable left knee injury.

II. Temporary Total Disability for Right Knee

The principal opinion finds that for her right knee injury, the claimant is entitled to temporary total

disability benefits from July 11, 2001 through September 6, 2002, and from February 12, 2003 until a date yet to be determined. While I concur in the principal opinion's finding that claimant is entitled to temporary total disability benefits for these periods, my review of the evidence indicates that, rather than entering a second healing period on February 12, 2003, the claimant's healing period for her right knee continued from September 6, 2002 to a date yet to be determined, such that she is entitled to temporary total disability benefits for her right knee from July 11, 2001 and continuing through a date yet to be determined.

The principal opinion determines, based upon the statement of Dr. Bullis on September 6, 2002 that "both knees look better today," that the claimant's healing period for her right knee ended on September 6, 2002. My review of the entire medical evidence indicates that this statement by Dr. Bullis cannot be interpreted to mean that claimant's right knee condition had been so far restored as the permanent nature of the injury would permit as of September 6, 2002. Initially, while Dr. Bullis did state that both knees appeared to be improving, his clinic note stops far short, in my opinion, of indicating that claimant's right knee condition had healed. Furthermore, it is clear that

the claimant's healing period had not ended as of September 6, 2002 when it is observed that the claimant underwent surgery on February 12, 2003 to repair the conditions causing her right knee problems. For these reasons, I find that the claimant is also entitled to temporary total disability benefits for her right knee problems from September 6, 2002 to February 12, 2003.

SHELBY W. TURNER, Commissioner

Commissioner Yates concurs and dissents.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the principal opinion. I concur in the affirmation of the findings that the claimant failed to prove that she sustained a compensable injury to her back, and failed to prove that her back condition is a compensable consequence of her May 2000 injury. However, I dissent from the reversal of the findings regarding the claimant's right knee, and her entitlement to temporary total disability and continuing medical treatment for her right and left knees.

The claimant sustained an admittedly compensable injury to her left knee on May 14, 2000. She alleged that

she injured her right knee during a fall on July 10, 2001. The claimant sought treatment at an emergency room on July 11, 2001, and was diagnosed with a contusion to the right knee. She discussed her right knee injury with Dr. Bullis on August 31, 2001, and he diagnosed her with a posterior cruciate ligament tear, but treated her conservatively because "she was not having any significant instability with it." A note from a March 13, 2002, visit with Dr. Bullis reflects that the claimant "noted" the right knee injury, but the treatment on that date was for anterior pain in the left knee. The claimant next complained of right knee pain during a visit with Dr. Leffers on April 18, 2002. The diagnosis on that date was right knee pain and swelling, and the clinic note indicates that the claimant experienced "more intense" right knee pain beginning four days earlier.

The Administrative Law Judge correctly found that the claimant's left knee injury caused her to fall down the steps in her home in July 2001, and resulted in necessary medical treatment which was provided at the emergency room on July 11, 2001. However, I find that the Administrative Law Judge also correctly found that the subsequent treatment of the right knee was for damage that was not proved to be causally related to the 2001 fall. It would require conjecture and speculation to conclude that the claimant's

increased knee pain in April 2002 was the result of a fall which occurred in July 2001. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1970). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). Dr. Mulhollan performed arthroscopic surgery on the claimant's right and left knees in 2003. His findings regarding the claimant's right knee included a torn medial meniscus and degenerative changes. He did not note any findings with regard to the posterior cruciate ligament. Dr. Bullis's finding that the claimant sustained a posterior cruciate ligament tear was also not supported by objective findings in the 2003 MRI ordered by Dr. Mulhollan. That study only demonstrated "thinning with signal change" of the posterior cruciate ligament, and even this MRI finding was not confirmed by Dr. Mulhollan during surgery. I find that Administrative Law Judge McKinney's careful review of the evidence led her to the correct conclusion - that the medical records are insufficient to causally link claimant's initial subjective examinations, which suggested damage to the posterior cruciate ligament, with the medial meniscus tear ultimately repaired by Dr. Mulhollan.

Regarding the claimant's entitlement to temporary total disability in connection with her right knee injury, as noted by the principal opinion, the emergency room record from July 11, 2001, does restrict the claimant from prolonged standing or walking. However, the form which indicates that restriction also has options titled "Unable to return to work for ___ days," and "Modified work if available." Neither of these options were selected by the treatment provider on that date. Therefore, I do not agree that the claimant was taken off work in regards to her right knee at that time.

Concerning temporary total disability associated with the left knee injury, I agree with the principal opinions' finding that the claimant is entitled to temporary total disability from November 15, 2000, through January 29, 2002. I disagree that the claimant re-entered a healing period in 2003, and dissent from the award of additional temporary total disability after that time. Because the operative reports from the claimant's first three left knee procedures were not included in the evidence, it would require impermissible conjecture and speculation to conclude that Dr. Mulhollan's left knee findings in February 2003 are related to her compensable injury which occurred almost three years earlier. There is simply no way to determine

whether Dr. Mulhollan's findings are related to the compensable injury and are not degenerative in nature. A key factor in the inability to make this causal connection is Dr. Bullis's September 2002 examination of the claimant's knees in which he stated that both of the knees looked better. Dr. Mulhollan's findings with regard to the claimant's left knee included a degenerative tear of the outer meniscus. His records draw no connection between this finding and the claimant's compensable left knee injury. Further, Dr. Bullis stated that the claimant had reached maximum medical improvement with regard to her left knee and assigned her a permanent impairment rating in January 2002. I agree with the Administrative Law Judge's statement that the assignment of a permanent impairment rating indicates that the claimant's left knee will not return to its prior condition. The permanent injury may continue to cause the claimant pain; however, that does not lead to the conclusion that the claimant remains in her healing period for the left knee injury, and does not justify an award of additional temporary total disability. When a condition becomes stable and when nothing further will improve that condition the healing period has ended and the claimant is no longer entitled to receive temporary total disability compensation, regardless of her physical capabilities. Moreover, the

persistence of pain is not sufficient in itself to extend the healing period or to find that the claimant is totally incapacitated from earning wages. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Because I would affirm and adopt the Administrative Law Judge's opinion in its entirety, I must concur in part and dissent in part from the majority opinion.

JOE E. YATES, Commissioner