

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F205896

PATRICIA PRATHER, EMPLOYEE	CLAIMANT
THE SUMMIT HOUSE APARTMENTS, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 30, 2003

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

Claimant represented by HONORABLE ZAN DAVIS, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE FRANK NEWELL, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed April 11, 2003.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the prehearing telephone conference conducted on December 9, 2002, and contained in the Prehearing Order filed that same date are hereby accepted as fact.
2. Claimant earned sufficient wages to be entitled to a temporary total disability rate of \$232.00 per week and a permanent partial disability rate of \$174.00 per week.

3. Claimant sustained a compensable injury of a torn medial meniscus on April 15, 2002, when she fell during the course and scope of her employment.

4. At the time of her injury, claimant had very advanced degenerative processes in her left knee.

5. Claimant required a total knee replacement after her compensable injury as a result of her advanced degenerative condition.

6. Claimant has failed to prove by a preponderance of the evidence that additional medical treatment, including but not limited to her knee replacement is reasonably necessary in connection with her compensable injury.

7. Claimant was within her healing period and totally incapacitated from earning wages from the date of her injury through August 2, 2002.

8. Respondents have controverted claimant's entitlement to temporary total disability for those dates between April 16, 2002, through August 2, 2002, on which the claimant did not work and she did not receive temporary total disability benefits.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I must respectfully dissent from the opinion of the majority finding that the claimant failed to prove that additional medical treatment, including total knee replacement surgery, is reasonably necessary in connection with the compensable injury.

The claimant, who was employed as a housekeeper at the respondent's apartment building, suffered an injury to her left knee when she fell on April 15, 2002. As a result of that injury, the claimant came under the treatment of Dr. Lowery Barnes, a Little Rock orthopedic surgeon. Dr. Barnes diagnosed the claimant as suffering from a torn medial meniscus and performed an arthroscopic meniscectomy and a chondroplasty of the patella.

The claimant did not recover well from the surgery and continued to suffer severe pain and debilitating weakness in her knee. Eventually, Dr. Barnes performed a total knee replacement on September 16, 2002. Dr. Barnes released the claimant to return to moderate work in January of 2003. Shortly thereafter, the claimant returned to full-time employment.

The only issue presented for determination is whether the compensable injury of April 15, 2002 is the major cause of the claimant's need for total knee replacement surgery. In this regard, I note that the claimant had a history of left knee problems going back to 1998. At that time, the claimant had sought medical treatment for chronic knee pain and prior to her injury of April 15, 2002, she had undergone two arthroscopic procedures to correct torn cartilage. The claimant was also taking Vioxx as well as anti-inflammatory medication. The claimant's knee problems did not prevent her from quickly returning to work and, while she did have occasional flare ups of knee problems, she continued to be employed in strenuous occupations such as factory work or as a housekeeper. It was while working as a housekeeper for the respondent that the claimant slipped and injured her knee. The respondent accepted this injury as compensable and provided her appropriate benefits including medical treatment.

The claimant's treating physician was Dr. Lowery Barnes, a Little Rock orthopedic surgeon. Dr. Barnes had performed an arthroscopic knee surgery prior to the claimant's job related accident and a second arthroscopy on May 21, 2002, approximately one month after her accident. In a report dated August 12, 2002, Dr. Barnes opined that, while the claimant would have ultimately required a total knee replacement, her job related accident precipitated the need for a knee replacement. In addressing this question, Dr. Barnes stated as follows:

I have previously performed an arthroscopy for her a year earlier and she had done well with it and had resumed her normal activities. However, the combination of her significant medial meniscus tear and her underlying arthritis has left her in a situation that she cannot continue her normal activities.

It is my impression that she had preexisting arthritis but that the arthritis did not cause her to require treatment. It is my medical impression that the event at work was enough to "push her over the edge" and it is more than 50% of the reason that she requires total knee replacement "at this time." There is no doubt in my mind that she would have ultimately required total knee replacement.

The respondent contends that the claimant's knee replacement was necessitated by her preexisting degenerative condition and not her compensable injury. This contention is based almost entirely upon the opinion of Dr. James Mulhollan, a Little Rock orthopedic surgeon who performed an

independent medical examination of the claimant on July 30, 2002. In a report of that date, Dr. Mulhollan noted that the claimant had serious degenerative knee problems prior to her injury. He went on to state that the claimant's need for a knee replacement, "antedeceded the injury."

Dr. Mulhollan was given an opportunity to explain himself more fully in a deposition taken on February 12, 2003. During the course of the deposition, Dr. Mulhollan discussed the claimant's degenerative changes prior to her compensable injury. He believed that she had what he called a "four plus degenerative process" in her knee. Dr. Mulhollan explained that the grade he gave her knee meant that it was severely arthritic and that a knee replacement was indicated.

The deposition also provided some background on Dr. Mulhollan's experience. In describing his background, Dr. Mulhollan indicated that his practice was limited solely to arthroscopic surgeries of the knee. He characterized himself as a "strange sub specialist" in that he had done only arthroscopic knee surgeries for the past 24 years. In spite of his admitted lack of experience in knee replacement procedures, Dr. Mulhollan asserted his expertise in determining whether a person was a candidate for such treatment. His conclusion was that the claimant had been in need of knee replacement surgery for some time and that he would have recommended such a procedure before the claimant received her Meniscectomy in May of 2002.

However, during cross examination, Dr. Mulhollan appeared to be backtracking somewhat from his assertion that the claimant's knee injury was unrelated to her need for the knee replacement. Dr. Mulhollan gave the following response when specifically asked about the effects of the April 15, 2002 injury:

Q. And is it fair to say, Doctor, that whatever happened to her on April 15, 2002, looked like the precipitating event that caused her to become symptomatic and caused her to have the knee replacement?

A. Yeah, I agree that it was the precipitating event.

Q. Okay. And if it had not been for that event or any other event, she might have put off this knee replacement indefinitely?

A. Unlikely.

Q. Okay. It's possible, though, is not Doctor?

A. It's possible.

Q. If she taken real good care of herself and not had any trauma and gotten real lucky, she might have gone another year; is that correct?

A. That's correct.

Q. Could have gone two years?

A. Possibly.

Later, during redirect examination, Dr. Mulhollan was shown a report from Dr. Barnes discussing his belief that the claimant's compensable injury created a necessity

for the knee replacement surgery at the time it was performed. In commenting on the report, Dr. Mulhollan stated:

So I think that he and I agree that the job injury was the precipitating event, but I don't agree that, that qualifies as greater than 50% of her problems.

The issue in this case, framed in the narrowest possible terms, is whether the claimant would have been required to undergo knee surgery when she did, if she had not had the accident on April 15, 2002. Instead, the majority has focused the inquiry on whether the claimant had degenerative joint disease and, if so, would it have ultimately required her to undergo surgery. However, even Dr. Mulhollan, a doctor the claimant saw at the request of the respondent, was of the opinion that had the claimant's job related knee injury not occurred, the knee replacement surgery would not have been necessary for at least a year and possibly two years. In my opinion, Dr. Barnes' reports, when taken in conjunction with Dr. Mulhollan's testimony, make it clear that, but for her compensable injury, she would not have been required to undergo knee replacement surgery in September 2002.

For the foregoing reasons, I must respectfully dissent. The opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner