

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204392

LEONARD BALLANCE,
EMPLOYEE

CLAIMANT

K. C. CONTRACTING,
EMPLOYER

RESPONDENT

AMERICAN HOME ASSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 30, 2004

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

Claimant represented by HONORABLE GREGORY GILES, Attorney at
Law, Texarkana, Arkansas.

Respondents represented by HONORABLE R. SCOTT MORGAN,
Attorney at Law, Pine Bluff, Arkansas.

Decision of the Administrative Law Judge: Affirmed.

OPINION AND ORDER

Respondents appeal the January 21, 2004 decision of
an Administrative Law Judge, finding that Claimant's total
left knee replacement is reasonably necessary for treatment
of Claimant's compensable injury and that Respondent's are
liable for that procedure. Claimant cross appeals
requesting temporary total disability benefits because the
Administrative Law Judge did not address this issue. After
conducting a de novo of the entire record, we find that the
Administrative Law Judge's opinion should be affirmed and
that Claimant is entitled to temporary total disability

benefits for the period of December 17, 2002 to October 23, 2003.

On February 22, 2002, Claimant sustained an admittedly compensable injury to his left knee when he stepped in a hole in a chicken house while working as a chicken catcher for Respondent. Claimant, born October 7, 1955, has worked as a chicken catcher since dropping out of high school in the ninth grade with the exception of a nine month period in which he worked at a steel mill. Claimant first injured his left knee in the 1980s as a result of a motor vehicle accident and underwent surgery at that time. The parties stipulated that Claimant sustained a compensable left knee injury on February 22, 2002 and Respondents have accepted liability for a five percent (5%) permanent impairment rating.

Claimant sought treatment from Dr. Chris Alkire following the February 22, 2002 injury. The MRI of Claimant's left knee taken on April 26, 2002 revealed "severe degenerative arthritis," "marked degenerative change in the anterior horn of the lateral meniscus" and the possibility of "a tear at this site but it is difficult to be certain due to the degree of degeneration."

On May 17, 2002, Dr. John Gregory made the following notes after examining Claimant:

This patient comes in today for evaluation. He injured his left knee back in February when he stepped in a hole and twisted it. He had arthroscopic surgery years and years ago and had no trouble up until the most recent injury. X-rays today show severe degenerative changes in all compartments. MRI coincides with this. His main complaint is that his knee catches in certain positions and he has to work it loose and it is significantly painful.

On exam today he had a slight effusion. He has significant medial joint line pain on flexion and external rotation of the tibia. Dr. Alkire proposes to scope his knee and I agree that is a good first step. Ultimately I think that he'll have to have a knee replacement.

Claimant underwent arthroscopic surgery on his left knee on July 3, 2002. The postoperative diagnosis included "anterior horn tear of the lateral meniscus" and "small posterior horn tear of the medial meniscus." Dr. Alkire's notes in the months following the surgery show that Claimant continued to complain of pain, "popping" in his knee, and that his knee gave way. Claimant testified that the surgery did not help his condition and that his knee "popped," gave out on him on several occasions, and was very painful to walk on. Claimant described one particular

incident in which his knee gave way while he was walking down his porch steps to take trash to the street for pick up. Dr. Alkire treated Claimant with pain medicine, physical therapy, and synvisc injections. Dr. Alkire expressed a desire for Claimant to return to work. However, Claimant relayed that he had experienced severely painful give-way episodes prior to actually being able to return to work. On October 28, 2002, Dr. Alkire opined in a letter that Claimant was unable to return to work: "Mr. Leonard Ballance has been unable to work because of chronic knee pain undergoing treatment right now with Synvisc injection. He's going to be unable to work for at least the next four weeks and possibly longer." On October 31, 2002, Dr. Alkire wrote that Claimant may "return to light duty - sit down sedentary work only." Claimant testified, however, that he was not able to return to work because Respondent was no longer employing chicken catchers.

On November 14, 2002, Dr. Alkire opined in a letter to the insurance carrier that Claimant was not yet at MMI and predicted that Claimant might need total knee replacement surgery:

Mr. Ballance does have significant arthritis of his knee in spite of the meniscectomy in the bend of his knee. He

still has significant symptoms of arthritis in his knee. I do believe that this patient is going to need total knee replacement. Because of his young age, I've attempted to try to put that off as long as possible with the ultimate conservative case to include injections of cortisone and hyaluronic acid substitute, Synvisc. He's currently undergoing active treatment with Synvisc injection to his knee. If these injections fail, patient will likely need a knee replacement. That decision for knee surgery, however, has not been made.

Mr. Ballance as of 11/13/02 is not yet at MMI.

I did attempt to return Mr. Ballance to work, but he has still some significant pain and discomfort in his knee. It should be noted that the complaint he had when he took out the garbage at his house was not an injury but just continued symptoms of the same pathology that was due to this on-the-job injury of 4/13/02 [sic].

Dr. Alkire opined on December 2, 2002, that Claimant's "only chance of relief is going to be a total knee replacement...He's unable to do his normal job or any work that he has to do standing and walking because of pain in his knee."

Respondents sent Claimant to Dr. James Mulhollan for evaluation on December 17, 2002. Dr. Mulhollan opined that "he sustained an injury to an already very degenerative

joint." In his deposition testimony, Dr. Mulhollan opined that the injury aggravated Claimant's degenerative condition and that a total knee replacement is a reasonably necessary procedure for the total overall condition of the knee:

Q: Now, Doctor, after you were able to review these records and see Doctor -- see Mr. Ballance, did you form an opinion after review and exam about whether or not the need for the total knee replacement was caused by his single injury of 2-22-02 or whether it was due to the overall condition of that left knee?

A: Well, there's no question that the - - that the injury aggravated the patient's situation. But there's also no doubt in my mind that the overwhelming majority of the problem is the degeneration that anteceded that injury.

Q: Okay. But would you -- would you agree, Doctor, that the total knee replacement may be necessary now for the overall condition of this man's left knee? Would that be a reasonable, necessary procedure for the total overall condition of the knee?

A: Yes.

Respondent refused to provide knee replacement surgery based on Dr. Mulhollan's opinion. Thereafter, Claimant returned to Dr. Alkire in January, 2003. On

January 13, 2003, Dr. Alkire also opined that the February, 2002 work injury aggravated Claimant's degenerative condition:

[T]here's no question that Mr. Ballance had degenerative changes of his left knee prior to his 2/25/02 [sic] accident. However, it is my opinion that Mr. Ballance's current symptoms and the need for further surgery; i.e. a knee replacement of his left knee, has been brought on by an exacerbation of the symptoms of his preexisting arthritis that was worsened from his 2/25/02 [sic] on-the-job injury.

On January 30, 2003, Dr. Alkire referred Claimant to Arkansas Rehabilitation who assisted Claimant in obtaining total knee replacement surgery on May 27, 2003.

On the day of the hearing, October 23, 2003, Dr. Alkire released Claimant to return to work. Claimant testified at the hearing that he was ready to return to work, that he experienced only minor pain since the total knee replacement surgery and did not experience swelling or popping as he did prior to the surgery.

Since the Administrative Law Judge's January, 21, 2004 opinion, the Court of Appeals has awarded total knee replacement surgery to a claimant with a very similar degenerative knee condition to Claimant in Williams v. L & W Janitorial, Inc., ___ Ark. App. ___, ___ S.W.3d ___ (Feb. 4,

2004) (03-681). In Williams, the claimant first injured her knee in 1996 while working and again injured her knee at work in November, 2000. She testified that before the November, 2000 injury that she took Tylenol for pain and continued to work despite the pain. The respondents paid for the first knee surgery, but refused to pay for the total knee replacement surgery after two doctors opined that the claimant's condition was caused by degenerative arthritis. Dr. Mulhollan opined that if the claimant "had to have a total knee replacement the major cause of that would not be her November 15, 2000 injury, it's the underlying degenerative arthritic process." The Court of appeals reversed and remanded the case for an award of benefits based on the following reasoning:

Both doctors can be fairly said to have testified that appellant's fall at work was not the major cause, but that it was, at least, a factor in her resulting inability to work and need for knee-replacement surgery...the Commission had found that appellant had failed to prove a causal connection between her compensable injury and her need for total-knee-replacement surgery. Moreover, the Commission concluded that '[t]here is no evidence that the degenerative disease was worsened by the work-related injury.' Even reviewing the evidence in the light most favorable to the Commission's findings, we conclude that they are not supported by

substantial evidence. Appellees had to take appellant as they found her, and the compensable injury that she suffered was a factor in her need for the additional surgery.

Here, as in Williams, Dr. Alkire and Dr. Mulhollan have opined that Claimant's work injury aggravated his preexisting condition and was a factor contributing to his need for total knee replacement surgery. Therefore, we find, as did the Court of Appeals, that Claimant's admittedly compensable injury was a factor in his resulting inability to work and need for the total knee replacement surgery. Accordingly, we find that Claimant is entitled to additional medical treatment in the form of total knee replacement surgery and that Respondents are liable for that procedure.

We also find that Claimant is entitled to temporary total disability benefits. A claimant "who has suffered a scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work." Ark. Code Ann. § 11-9-521(a) (Repl. 2002); Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of

treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

We find that Claimant is entitled to temporary total disability benefits from December 17, 2002, to October 23, 2003. We note that it appears from the record that Respondents terminated Claimant's temporary total disability benefits on December 17, 2002, following Dr. Mulhollan's examination of Claimant and that Claimant is requesting indemnity benefits as of that date. We find that Claimant was in his healing period on December 17, 2002, because Claimant had not yet undergone the recommended knee replacement surgery and Drs. Mulhollan and Alkire opined that Claimant's work injury was a factor necessitating that surgery. Additionally, Claimant had not returned to work. We find that Claimant's healing period ended when he reached MMI following the May, 2003 knee replacement surgery on October 23, 2003. We, therefore, find that Claimant is entitled to temporary total disability benefits from December 17, 2002, to October 23, 2003.

For the foregoing reasons, we find that Claimant is entitled to additional medical treatment in the form of left knee replacement surgery and temporary total disability benefits for the period of December 17, 2002 to October 23,

2003. 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 Claimant's injury occurred after July 1, 2001, 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

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.