

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E805029

CAROL WORTMAN,
EMPLOYEE

CLAIMANT

WAL-MART STORES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

CLAIMS MANAGEMENT,
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED APRIL 22, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE TOD BASSETT, Attorney
at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law
judge's opinion filed September 19, 2003. The
administrative law judge found, "The medical services
provided to the claimant for her left knee difficulties by
and at the direction of Dr. James McKenzie and Dr. John Park
on and after October of 2000, constitute reasonably
necessary medical expenses for the claimant's compensable
injury of August 5, 1997." The administrative law judge
found that the claimant proved she was temporarily totally
disabled "for the period beginning July 27, 2001 and
continuing through December 3, 2002." After reviewing the

entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that the claimant failed to prove that medical treatment after October 2000 was reasonably necessary in connection with the claimant's compensable injury. We also find that the claimant failed to prove she was entitled to temporary total disability compensation after July 27, 2001.

I. HISTORY

Carol Jean Wortman testified that she initially injured her left knee while playing touch football in 1974, for which injury she underwent surgery. The claimant agreed that she subsequently underwent at least two "scoping" procedures in her left knee. The claimant testified that she began working in administration for Wal-Mart in February 1993. The claimant's testimony indicated that she performed office duties rather than retail services. The claimant first presented to Dr. James M. McKenzie in January 1994:

This is a 47-year-old, white female with left anterior knee pain that has been going on for 4-5 months, and it seems to have gotten worse lately. She has had two knee surgeries including a meniscal repair in the past and arthroscopy in 1991. She also had surgery in 1974 which she cannot recall exactly what they did at that time. She has not had a lateral release, as far as she knows....

Radiographs of her knee, AP, lateral, and sunrise views show some slight tilting of the patella laterally, but no subluxation.

Dr. McKenzie's impression was "Anterior knee pain most likely representative of patellar tilt." Dr. McKenzie placed the claimant in a physical therapy program.

Dr. McKenzie's impression in February 1995 was "Internal derangement of the knee." The record indicates that Dr. McKenzie subsequently performed a "knee arthroscopy and lateral release." The claimant continued to occasionally follow up with Dr. McKenzie. In July 1996, Dr. McKenzie diagnosed "Degenerative arthritis of the medial compartment of the left knee." Dr. McKenzie performed a "Left uni-compartmental knee replacement using Osteonics 7 medial femur, 7 medial tibia, and 9 mm spacer." A final diagnosis provided by Dr. Daniel S. Weeden in July 1996 included "Degenerative arthritis of the medial compartment of the left knee. Surgery: She had a medial compartment knee placement."

Dr. McKenzie released the claimant to go back to work in September 1996. The claimant continued to occasionally follow up with Dr. McKenzie. The claimant began undergoing physical therapy in April 1997. Dr. McKenzie noted in April 1997, "Radiographs of her knee have shown excellent position of her components and no evidence of degenerative changes

along the lateral side of the knee." Dr. McKenzie noted on July 3, 1997, "Her knee pain anteriorly seems to be focused at the patellar tendon/patellar junction. I have told her at this time, with her x-rays showing radiolucencies and excellent position of her components, that I wanted to try her on some iontophoresis; however, she does not want to have any electrical type of PT....She is going to try and tough this out." Dr. McKenzie indicated that the claimant would return to him in a year.

The parties stipulated that the claimant sustained a compensable injury to her left knee on August 5, 1997. The claimant testified:

Q. What happened to you on August 5, 1997?

A. I was having to go downstairs to pick up some information from my supervisor and I had to walk to the elevator in order to get downstairs, and I stepped on some bolts that I didn't see on the floor....I was able to catch myself, but I felt my knee rip as I was falling.

The claimant testified that following the accidental injury she felt "just a lot of severe pain, and when I was walking, the knee was just not very stable, and this was severe pain." The claimant acknowledged her treatment with Dr. McKenzie in July 1997 before the injury, but testified, "The pain after I fell was more severe....It was in a different location. It was at the side of my knee and not in my quad."

The claimant saw Dr. Rodger C. Dickinson, Jr. on August 6, 1997:

She was at work yesterday and she said they had a bunch of stuff piled all around the floors and she was trying to navigate it and kind of made a twist. She felt a kind of pain and kind of tearing in the lateral aspect of her left knee, it's sore....On exam today, she's very hypersensitive over the lateral aspect of her knee starting about the level of the lateral femoral condyle and going down to Gerdy's tubercle and over the fibular head. No true effusion. Clinically her patella and quadriceps are intact.

AP and lateral looks fine.

Grossly, she's not unstable but has pain on stressing the lateral ligaments. Conceivably she may have had a lateral ligament strain.

Dr. Dickinson placed the claimant in a small knee immobilizer and otherwise treated the claimant conservatively. An MR of the left knee without contrast was taken on August 19, 1997:

The patient has a history of a medial compartment hemiarthroplasty. The patient is currently undergoing evaluation for the possibility of an injury to the lateral collateral ligament....There is extensive artifact in the medial compartment of the knee. The artifact arises from the hemiarthroplasty and precludes meaningful evaluation of this portion of the knee. The lateral compartment, however, is well visualized. Lateral meniscus is intact. Lateral collateral ligament is reasonably well visualized and no evidence of an injury is seen. Posterior cruciate ligament is intact. Artifact largely obscures the anterior cruciate ligament and its status is uncertain. The area of the medial collateral ligament is completely obscured by artifact....

IMPRESSION:

1. Medial compartment hemiarthroplasty with related artifact formation. See discussion above.
2. Intact lateral meniscus and adjacent lateral collateral ligament.
3. Minimal joint effusion.

Dr. McKenzie noted on September 30, 1997, "I have told her today that there is really nothing else I can do. She has been braced. She is six weeks out. She still has considerable pain that is out of proportion to the injury. I have sent her to the Pain Clinic. I really don't see how there is anything else we can do." The claimant began pain management with Dr. R. David Cannon in October 1997. Dr. Cannon's assessment was "Left knee pain, etiology unknown." Dr. McKenzie stated in November 1997, "She has failed pain management. There is really nothing he could do. She declined all forms of treatment."

Dr. McKenzie reported in April 1998:

This is a 50-year-old white female brought to the operating room 4/27/98 for arthroscopy of her knee. She has had chronic knee pain following an injury which she sustained at work. Over a year ago she had a unicompartmental knee placed medially and has had persistent pain after she twisted her knee on a bolt at Wal-Mart General Offices. The patient has failed all means of nonoperative management and has given informed consent for total knee replacement arthroplasty....

Radiographs of her knee show medial compartment arthroplasty with no evidence of loosening, excellent position of the component, no narrowing of the lateral joint space....

IMPRESSION: Chronic left knee pain following an injury which was preceded by hemiarthroplasty of the knee.

Dr. McKenzie's operative summary noted, "The lateral compartment showed a normal lateral femoral condyle, tibial plateau, however the lateral meniscus showed a non displaced horizontal tear."

The claimant testified that the respondent-carrier referred her to Dr. John P. Park, who opined on August 28, 1998, "At this point, it appears to be more of a neural discomfort than anything else." Dr. Park noted in October 1998, "I have discussed with her that I know little else to do other than live with this conservatively as best she can or consideration of exploration of this thickened iliotibial band area which appears to be the main source of her pain. Certainly, an excision or division of this could not assure that the symptoms would go away." On April 5, 1999, Dr. Park performed "Excision of fibrotic iliotibial band segment, left knee" and "Excision of ganglion, lateral synovium, left knee."

Dr. Park wrote to an attorney on April 20, 1999:

She recently underwent surgery where a portion of her tissues on the outer of knee were causing pain and they were resected. The results of this revealed a cyst type reaction, which was coming off the synovium of the joint laterally. There was no evidence of tumor or other problems related. I am uncertain of the origin of this except it is in the area on the knee that has had

previous surgical intervention, but I cannot definitely state that this is related to her injury or to her surgeries, more than likely, she has had the pain syndrome since these occurred.

Dr. Park wrote to the respondent-carrier on May 21, 1999:

In response to your questions, it is most probable, in my opinion, the cyst was causing a significant amount of her symptoms especially with the thickened iliotibial band rubbing this over this site. Certainly, I have no way of telling if this is related to her workers' compensation of 08/05/97....

I would expect that she would reach her Maximum Medical Healing within six months after this surgery....I think she would be able to return back to work on approximately 05/01/99, but this could have to be modified by several weeks until she is more comfortable and ambulatory.

Dr. Park noted in June 1999, "Her pain is essentially gone regarding the knee." Nevertheless, the claimant continued to occasionally follow up with Dr. Park for continued complaints of pain.

The claimant testified that she began working for CMI, the respondent-employer's claims administration department, in August 2000. The parties stipulated, "All possible benefits for this compensable injury have been paid through September of 2000."

Dr. Park wrote to counsel for the respondents on October 18, 2000:

The patient presents only with localized tenderness at the site laterally on her knee at

the same site that previously had had the ganglion cyst type tissue removed. I'm uncertain of what the origin would be of the ganglion cyst; as to whether it's related to any specific injury or to the previous uni-compartment knee replacement as there's no way of tagging it. It did not involve any plastic components or metal components directly as they were not reported seen specifically within the tissue.

Therefore, I cannot say that the cyst is the result of reaction to the implanted prosthesis. I'm not certain that a cyst has recurred at that site but after a work up involving the knee, the only two options left are to leave it as is or explore the area as the cyst was found last time when all work up was negative for specific pathology. Therefore, there is no specific answer to the etiology of the cystic area that was found on studies. The only temporal relationship was that of 08/05/97; although work up of that syndrome revealed apparently a lateral meniscal tear and she was pain-free by 11/18/99.

On November 21, 2000, Dr. Park diagnosed "Pain in the left knee" and wrote, "She did well for a period of time, but has had recurrent symptoms and it has been recalcitrant to conservative management. She has had prolonged workup regarding this and we plan on operative exploration at this time in an attempt to find the source of her discomfort, if possible." Dr. Park performed an "Open excision of multi lobulated cyst, left knee."

Dr. Park noted on February 6, 2001, "She's developed just a generalized pain about the knee at this point." Dr. McKenzie reported on May 6, 2001:

Recently she has had pain and swelling in the knee and was referred back from Dr. Park when it was

discovered the existence of polyethylene particles in a biopsy specimen from her last ganglion cyst excision. The patient's radiographs recently in the office revealed failure of the polyethylene spacer in the medial compartment of the knee. She is now brought to the operating room for revision of the unicompartmental left knee replacement arthroplasty to a left total knee replacement no arthroplasty....

IMPRESSION:

Failed unicompartmental knee secondary to polyethylene failure, which may be secondary to ligament imbalance following the injury to her knee resulting in lax lateral ligament complex.

Dr. McKenzie wrote on July 23, 2001, "Carol tells me today that she is retiring. She is going to focus on her rehabilitation. She currently is spending time in the swimming pool walking to get exercise. I think this is a good idea for her. She also needs to work diligently on obtaining her full knee extension." The claimant testified that she left Wal-Mart on or about July 29, 2001. Dr. McKenzie wrote on December 20, 2001, "The patient is six months status post revision total knee that was a unicompartmental conversion. She is making slow progress with decreased pain....She has a considerable amount of hamstring spasm when I attempt full knee extension."

Dr. McKenzie reported on May 20, 2002, "Knee appears normal on Inspection except for a swollen palpable mass in the popliteal fossa....I would like the patient to have an ultrasound performed of her knee especially in the popliteal

fossa. I'm curious to know if this mass is solid or is cystic." The claimant continued her follow-up visits with Dr. McKenzie, who wrote on July 30, 2002:

I've recommended arthroscopy of the knee to identify scar tissue that could be interfering with the range of motion. The patient also understands that she may need revision of the knee again to improve her motion and decrease her pain. At this point I do not know what the future will hold for this patient. She has undergone several surgeries and all have failed. There is no doubt that she does have a dysfunctional total knee replacement surgery that is resulting in pain.

It seems that all the problems that have resulted in today have an origin with the original work-related injury that was sustained about August 5, 1997. This case has been very bizarre from the beginning. Nothing seems to follow the usual course of treatment for any of the diagnoses so far. At this point, I've no idea what the future holds for this patient. If the future has a tendency to repeat the past then I do not see that good things are to come.

Dr. McKenzie recommended a bone scan and reported on October 14, 2002:

The bone scan essentially was negative. She had very minimal uptake around the prosthesis. I would expect this considering her surgery has been within the last year. no evidence of infection or loosening could be clearly identified.

The patient continues complaining of pain and limited motion.

I believe that we should proceed with arthroscopy of the knee. We can evaluate the polyethylene spacer and evaluate the joint and see if adhesions are present....

Dr. McKenzie performed arthroscopy of the claimant's left total knee on or about October 22, 2002. Dr. McKenzie stated on December 3, 2002, "I believe the patient has giving way secondary to muscular atrophy. I've recommended she start physical therapy with electrical stimulation. I would like her to return as needed in the future. She is changing insurance companies. I am not included in the Blue Cross plan that she is signing up for."

Ms. Wortman claimed entitlement to additional worker's compensation. The claimant contended that she was entitled to additional medical treatment for her left knee on and after October 2000. The claimant contended that she was entitled to temporary total disability compensation beginning July 27, 2001.

Dr. Park wrote to the claimant's attorney on February 10, 2003:

Based on temporal relationship alone, from what the patient tells me, I would believe that the injury of 08/97 was the aggravating factor leading to the surgical treatment performed after that date.

Hopefully, will not require further surgical treatment in the future but may require intermittent local treatment. She states she has difficulty with squatting, etc.; however, I would suspect that arthroplasty that she had carried out prior to this certainly limits, to the majority of degree. I'm not sure if there's any new problem of that nature since this injury.

Dr. Park wrote to the respondents' attorney on March 25, 2003:

After review of the information, the one thing I was not aware of was the fact that Dr. McKenzie had a direct view of the knee and felt that there was no significant evidence of plastic breakage; although, this does not completely rule out micro-fracture of paritulate debris coming off of the prosthesis as a cause. It becomes the time frame from which we can judge that the prosthesis, at least appeared normal to gross inspection.

Therefore, bases on that, I would have to revise my temporal relationship and state that I cannot, to a reasonable degree of medical certainty, relate the injury as the aggravating factor leading to the surgical treatment performed after that date.

I appreciate being appraised of the surgical findings and hope that this helps in dealing with the client.

Dr. McKenzie wrote to the claimant's attorney on June 10, 2003:

Carol is still in her healing period. As you know, she has experienced a quite protracted recovery following revision total knee replacement surgery. At this time she is unable to return to work or perform any prolonged standing, walking, or sitting. I doubt that she will ever be able to return to work.

It is extremely difficult to say if she will need further surgery. The main reason why I say this is, She has not done well with two previous operations and I am not sure yet another would resolve her problems. If she did undergo another operation it would likely be revision total knee replacement surgery....

Hearing before the Commission was held on June 23, 2003. The claimant testified that she still suffered from

pain, swelling, and instability in her knee. The claimant testified that she was unable to return to work, "Because I can't really sit for long periods of time, and I can't stand for long periods of time. My leg swells up about three times its normal size, and at night, I would have to go home and ice my leg down."

The administrative law judge found, "The medical services provided to the claimant for her left knee difficulties by and at the direction of Dr. James McKenzie and Dr. John Park on and after October of 2000, constitute reasonably necessary medical expenses for the claimant's compensable injury of August 5, 1997." The administrative law judge found, "The claimant has proven by the greater weight of the credible evidence that she was rendered temporarily totally disabled as a result of the effects of her compensable injury of August 5, 1997, for the period beginning July 27, 2001 and continuing through December 3, 2002." The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Reasonably necessary medical treatment

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears

the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment.

Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 857 (1984).

In the present matter, the Full Commission reverses the administrative law judge's finding that treatment from Dr. McKenzie and Dr. Park after October 2000 was reasonably necessary. The claimant's testimony indicated that she had suffered from chronic left knee difficulties since 1974, and Dr. McKenzie first operated on the claimant's left knee in July 1996. Dr. McKenzie performed a left uni-compartmental knee replacement, which included insertion of a "9 mm spacer." The claimant continued to treat with Dr. McKenzie following surgery. The claimant sustained a compensable injury in August 1997; the claimant testified that she felt her knee "rip" after she stepped on a bolt. The claimant testified that the pain following the compensable injury was "at the side of my knee and not in my quad." Subsequent x-ray and MR testing did not show disruption of the claimant's uni-compartmental knee replacement, although Dr. Dickinson

did find it conceivable that the claimant had sustained a lateral ligament strain.

Dr. McKenzie performed additional surgery in April 1998. At that time, Dr. McKenzie confirmed that radiographs showed no evidence of loosening of the claimant's left-knee arthroplasty. However, Dr. McKenzie did observe during surgery a "non displaced horizontal tear." In April 1999, Dr. Park excised the claimant's fibrotic iliotibial band segment in the left knee and ganglion in the lateral synovium. Dr. Park stated in May 1999 that the claimant would reach maximum medical healing within six months following surgery, and in June 1999, Dr. Park noted, "Her pain is essentially gone regarding the knee." The respondents controverted additional medical treatment beginning in October 2000.

The claimant failed to prove that additional medical treatment after October 2000 was reasonably necessary in connection with the claimant's compensable injury. Dr. Park excised a multi-lobulated cyst in the claimant's left knee in November 2000, but the record does not indicate that this procedure was reasonably necessary in connection with the compensable injury. Dr. McKenzie reported in May 2001 that radiographs taken at that time revealed "failure of the polyethylene spacer in the medial compartment of the knee."

Dr. McKenzie therefore performed additional surgery. There is no probative evidence before the Commission showing that failure of the polyethylene spacer as shown in May 2001 was in any way causally related to the August 1997 compensable injury. We again note the absence of any such abnormalities shown on diagnostic testing immediately subsequent to the August 1997 injury. In July 2002, Dr. McKenzie described "a dysfunctional knee replacement surgery that is resulting in pain." The preponderance of the evidence does not indicate that the described dysfunction was causally related to the compensable injury. The Full Commission therefore reverses the administrative law judge's award of additional medical treatment after October 2000.

B. Temporary disability

An employee with a scheduled injury is entitled to temporary total disability compensation while she is within her healing period and has not returned to work. Ark. Code Ann. §11-9-521(a). The healing period continues until the claimant is as far restored as the permanent character of her injury will permit. When the underlying condition becomes stable, and when nothing further will improve that condition, the healing period has ended. Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W.2d 528 (1997). The determination of when the healing period ends is a question

of fact for the Commission. Carroll General Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996).

In the present matter, the Full Commission finds that the claimant failed to prove she was entitled to temporary total disability compensation after July 27, 2001. The claimant informed Dr. McKenzie on July 23, 2001 that she was retiring. The claimant contended that she was entitled to additional temporary disability beginning July 27, 2001. The claimant testified that she left Wal-Mart's employ on or about July 29, 2001. We find that the claimant had reached the end of her healing period for the compensable injury no later than October 2000, at which time the respondents controverted the claim. Temporary disability cannot be awarded after the healing period has ended. Trader v. Single Source Transportation, Workers' Compensation Commission E507484 (Feb. 12, 1999). Dr. Park noted in June 1999 that the claimant's knee pain was gone, and the claimant returned to work in August 2000. The Full Commission has determined *supra* that the claimant's reported difficulties beginning in October 2000 and following were not causally related to the claimant's compensable injury. We therefore reverse the administrative law judge's finding that the claimant was temporarily totally disabled from July 27, 2001 through December 3, 2002.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove she was entitled to additional medical treatment after October 2000. We find that the claimant failed to prove she was entitled to temporary total disability beginning on July 27, 2001. The Full Commission therefore reverses the opinion of the administrative law judge. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that claimant failed to prove by a preponderance of the evidence that the problems she experienced with her left knee subsequent to October 2000 were causally related to the admittedly compensable injury sustained in August 1997.

The majority relies heavily upon interpretations of various opinions expressed by Dr. Parks. However, it is significant that Dr. Parks was essentially deferring Dr.

McKenzie, who actually performed the partial and total knee replacement surgeries.

After an impartial review of the record as a whole, I find that claimant has proven by a preponderance of the evidence that the August 1997 work-related injury was to a lateral ligament, which resulted in a ligament imbalance or lateral ligament complex, which in turn caused an unusually rapid failure of the polyethylene spacer. Further, Dr. McKenzie opined that "[i]t seems that all the problems that have resulted in today have an origin with the original work-related injury that was sustained about August 5, 1997." Based on this evidence, claimant has met her burden of proof and, accordingly, the opinion of the Administrative Law Judge should be affirmed.

SHELBY W. TURNER, Commissioner