

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F112435

JAMES A. BANEY, SR., EMPLOYEE	CLAIMANT
POINSETT COUNTY JUDGE, EMPLOYER	RESPONDENT
AAC RISK MANAGEMENT SERVICES, INSURANCE CARRIER	RESPONDENT

OPINION FILED FEBRUARY 2, 2005

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

Claimant represented by HONORABLE KRISTOFER E. RICHARDSON,
Attorney at Law, Jonesboro, Arkansas.

Respondents represented by HONORABLE J. MATTHEW MAULDIN,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed May 26, 2004. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction over this claim.
2. The stipulations agreed to by the parties are
hereby accepted as fact.
3. The claimant has proven by a preponderance of
the credible evidence that his total knee
replacement performed on December 2, 2003 was

reasonably necessary, as well as causally related to the October 18, 2001, admitted injury and remains the responsibility of the respondents.

4. The claimant is entitled to additional temporary total disability for the period beginning December 2, 2003 and continuing through the present and until such date as claimant's healing period is determined to have ended.
5. The claimant's healing period had not ended as of the date of the within hearing.
6. Respondents are entitled to a dollar-for-dollar offset for any benefits the claimant's (sic) has previously received pursuant to A.C.A. § 11-9-411(a) (Repl. 2002).
7. Respondents have controverted all benefits beyond those previously paid.

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. 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

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion wherein the Administrative Law Judge awarded the claimant

additional medical benefits in relation to his admittedly compensable right knee injury which occurred on October 18, 2001. Specifically, the claimant underwent total knee replacement surgery on December 2, 2003, which the Administrative Law Judge found to be both causally related and reasonable and necessary to the treatment of the claimant's compensable knee injury. In addition, the Administrative Law Judge awarded the claimant additional temporary total disability benefits beginning December 2, 2003, and continuing until such time as the claimant's healing period has been determined to have ended. It is from this decision that the respondents appeal to the Full Commission.

My carefully conducted de novo review of the record in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that his total knee replacement surgery was causally related to his compensable right knee injury. Therefore, I find that the decision of the Administrative Law Judge should be reversed and an award of additional medical and temporary total disability benefits should be denied.

It is undisputed that the claimant sustained a compensable injury, specifically a sprain to his right knee,

on October 18, 2001. The claimant received all appropriate and necessary medical treatment for his injury, including steroid injections. In addition, the claimant received temporary total disability benefits until such time as he returned to work for the respondent employer upon his release by Dr. John Ball on January 7, 2002. Dr. Ball assessed the claimant with 0% physical impairment as a result of his compensable injury. The respondents continued to pay medical and related expenses for conservative treatment of the claimant's right knee until the claimant underwent total knee replacement surgery in December of 2003.

Although the claimant was shown to be a credible witness, the medical evidence presented in this claim, including the testimony of the claimant's treating physician and surgeon, Dr. Ball, fails to support a finding that the claimant's total knee replacement surgery was causally connected to his compensable knee injury, or that it was reasonable and necessary to the treatment of his compensable injury. Rather, the weight of the objective medical evidence presented in this claim indicates that the claimant's total knee replacement surgery was predicated on a belief by Dr. Ball that the claimant's "functional deficits," or his

ability to function from day to day, had worsened to a point where surgery had become necessary. What had caused the claimant's condition to worsen, however, was never conclusively established by medical evidence. In this regard, Dr. Ball refused to give an opinion regarding the reason for the claimant's ultimate need for total knee replacement surgery. Nor would Dr. Ball commit to the proposition that the claimant's injury was a definite factor in his need for said surgery. In a letter dated April 15, 2003, Dr. Ball stated:

It is true that Mr. Baney had pre-existing arthritis of his right knee but denied symptoms in the knee prior to his injury at work in October 2001. Since that time, he's shown progressive worsening of his symptoms, and gradual worsening of his arthritis on x-ray. Accordingly, it is felt that the patient had pre-existing arthritis which has been made worse by his work injury. A definite line of causality cannot be determined in this sort of situation. The indication for total knee replacement is based on several factors with the primary factor for this being the patient's level of symptoms. For this, we have to rely on the patient's subjective complaints of pain and the effect on his day to day functioning.

To further illustrate, Dr. Ball testified in his deposition taken on March 3, 2004, that he could not state

with any degree of medical certainty that the claimant's injury caused his need for total knee replacement surgery. Likewise, Dr. Ball refused to conclusively attribute the claimant's need for total knee replacement surgery to other factors such as the claimant's severe obesity, his age, or his pre-existing osteoarthritis. Once again, the only opinion to which Dr. Ball would commit with certainty was that "A definite line of causality cannot be determined in this situation."

When he walked in the door, he had enough arthritis to need a knee replacement if he had enough [functional] deficits to warrant it and all other majors have been done short of arthroplasty. Okay, and that was still true a year later. But you do the surgery on the basis of the deficits that the person has, assuming that they have the disease process.

The medical reports contained within the record confirm that the claimant suffered from, among other things, pre-existing osteoarthritis in both of his knees. Specifically, the claimant was treated for an injury to his left knee in 1999, at which time x-rays revealed the presence of osteoarthritis in both knees. Dr. Ball admitted during his deposition, however, that there were no significant physical changes seen in x-rays taken of the

claimant's right knee prior to his injury, at the time of his injury, and following his injury. Rather, the decision to proceed with the claimant's total right knee replacement surgery was based upon the claimant's subjective complaints of worsening physical symptoms. According to Dr. Ball, the manifestation of the claimant's symptoms into so-called "functional deficits" was the ultimate determining factor in his decision to perform total knee replacement surgery when he did. No objective medical explanation for the claimant's worsening symptoms was found by way of evidence contained within the record, however, as is confirmed by the following testimony.

Q. Okay. And just for the purposes of a clear record, we're talking about the cause -- or when I say cause, we don't know what caused the worsening of or the physical acceleration of the functional deficits to lead him to the point of surgery?

A. I don't.

Although upon cross-examination, Dr. Ball finally admitted that he saw a "connection" between the claimant's work related injury and his subsequent knee replacement surgery, he reiterated that his opinion was based upon information provided to him by the claimant. It is well established that the Commission is not bound by a doctor's

opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

Although an expert opinion is to be judged upon the entirety of the opinion, and it is not validated or invalidated on the presence or lack of "magic words," medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001); See also, Ark. Code Ann. §11-9-102(16)(B). Dr. Ball's medical testimony was, at best, non-committal. Furthermore, Dr. Ball emphasized throughout his deposition that he had based his decision to proceed with the claimant's total knee replacement surgery on the claimant's subjective physical symptoms rather than objective medical findings. Due to the lack of objective medical evidence presented in this case, I find that the claimant has failed to prove by a preponderance of the evidence that his compensable injury was a factor in his need for total knee replacement surgery or that it was reasonable and necessary to the treatment of his compensable injury.

Therefore, I respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner