

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F300056

DONNA CHALLIS, EMPLOYEE

CLAIMANT

VISKASE CORPORATION, EMPLOYER

RESPONDENT

HARTFORD INSURANCE COMPANY, CARRIER

RESPONDENT

OPINION FILED JUNE 29, 2005

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

Claimant represented by HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE GENE WILLIAMS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision of the Administrative Law Judge finding that the claimant proved by a preponderance of the evidence that she was entitled to additional medical benefits which included a total knee replacement. Based upon our de novo review of the record, we find that the claimant has failed to meet her burden of proof. Accordingly, we reverse the decision of the Administrative Law Judge.

The claimant sustained an admittedly compensable injury on May 6, 2001, to her left knee. There is no dispute about this injury and the respondents paid benefits

accordingly. The claimant ultimately underwent a meniscus tear repair on August 17, 2001. Dr. Woloszyn repaired the claimant meniscus and eventually assigned the claimant an impairment rating of 10% to the body as a whole. The respondents accepted and paid this impairment rating. The claimant continued to have problems with her knee and Dr. Woloszyn reported that the claimant would eventually need total knee replacement surgery.

The claimant contended that she is entitled to the medical treatment in the form of a total knee replacement. The respondents contended that the claimant has two distinct conditions in her knee, pre-existing degenerative arthritis and the meniscus tears which were surgically corrected. The respondents argued that there is no medical evidence which demonstrates that the meniscus tears aggravated the claimant's underlying arthritis. Accordingly, the respondents contend that the knee replacement surgery is not reasonable and necessary medical treatment. We agree with the respondents.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is

reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). When assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

The medical evidence demonstrates that the claimant had pre-existing problems with her knees. The claimant had surgery on her left knee in the early 1990's. In 1998 and 1999 she was treated for knee injuries after falling. Treatments included aspiration of fluid from the knee and injections.

On February 25, 2000, the claimant presented to Dr. Woloszyn complaining that her knee hurt. The examination showed that she had "tremendous effusion, severe medial joint line tenderness, positive Apley's sign, positive figure-of-four." Dr. Woloszyn performed surgery on March 3, 2000, to correct a left medial meniscus tear. Dr. Woloszyn found that the claimant had "heavy medial and lateral

patellar synovitis" and "a focal defect" and bone spur in the medial femoral condyle, grade II chondromalacia of the medial tibial plateau and grade II to III chondromalacia of the lateral tibial plateau. His post-operative diagnoses were osteoarthritis of the medial femoral condyle and lateral tibial plateau, and heavy synovitis. The claimant returned to Dr. Woloszyn on March 14, 2000, and received injections into her knee to relieve the pain.

On May 8, 2000, the claimant saw her family physician and complained of injuries to her knee when she fell in a bathtub. The claimant complained of her left knee giving out. She returned to Dr. Woloszyn on May 15, 2000, with effusion in her left knee. Dr. Woloszyn performed additional injections. On June 29, 2000, Dr. Woloszyn prescribed a knee brace. The claimant testified at the hearing that she had worn the knee brace continuously since that time.

On September 26, 2000, the claimant returned to Dr. Woloszyn complaining of left knee pain and swelling. Dr. Woloszyn reported that the claimant had bone-on-bone eburnation in the medial side. He aspirated the claimant's knee to relieve her symptoms. At that time he stated, "At some point she is going to end up with a total knee arthroplasty." The claimant returned to Dr. Woloszyn a week

later complaining of continued pain. A bone scan performed on October 5, 2000, was read as showing a "probable fracture medial compartment tibial plateau on the left".

On October 11, 2000, Dr. Woloszyn reported that the claimant had come back complaining that her arthritis was bothering her. He stated that ... "prior to contemplating total knee arthroplasty it was recommended that we try a series of Synvisc injections." Those injections were performed in January of 2001.

There is no medical evidence in the record that demonstrates that the claimant's May 2001 fall aggravated her pre-existing degenerative existing arthritis. Well before May of 2001, the claimant had bone-on-bone eburnation, which her treating physician, Dr. Woloszyn stated would lead to eventual total knee replacement. There is nothing in Dr. Woloszyn's records that indicate that the claimant's arthritis was worsened in anyway by the work related incident. The claimant had a meniscus tear which was treated by Dr. Woloszyn and he took great pains in his operative notes to distinguish between the meniscus tear and the pre-existing arthritis. When Dr. Woloszyn assigned the claimant her impairment rating, he made the distinction between the pre-existing condition which would eventually require surgery and the May 2001 injury.

The claimant cited the case of Williams vs. L & W Janitorial, Inc. 85 Ark. App. 1, 145 S.W.3d 383 (2004) to support a finding that the claimant's pre-existing condition had been aggravated. However, we find that this case is simply not on point with the case presently before us. In the Williams case there was no recommendation for a total knee replacement until after the claimant's injury. Two treating physicians testified that the work injury contributed to a need for the total knee replacement surgery although it was probably not the major cause. In this case, the need for and the recommendation for the knee replacement surgery pre-dated the work injury. The work injury in no way contributed to the claimant's need for the knee replacement surgery. There was no evidence that the work injury combined with or aggravated the pre-existing condition that accelerated the need for the total knee replacement surgery. To find otherwise, would require conjecture and speculation. 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 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Therefore, we cannot find that the claimant has proven that knee replacement surgery is reasonable and necessary medical treatment for her compensable injury. Accordingly, we hereby reverse the decision 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 the claimant failed to prove by a preponderance of the evidence that she was entitled to additional medical benefits including a total knee replacement.

The main issue in this claim is whether the total knee replacement that had been recommended by the claimant's doctor would be reasonably necessary and causally related to her compensable injury of May 6, 2001.

The claimant admitted to having had a previous surgery and to having had problems with her knees. The claimant testified that she had a surgery in 2000 that was not work related. She also related that she wears a knee brace which was prescribed by Dr. Woloszyn on June 29, 2000. She continued to have pain in her left knee after the 2000 surgery until she received three Synvisc injections in January of 2001. Per the claimant's testimony, her left knee was pain free by April of 2001.

The claimant sustained an admittedly compensable injury to her left knee on May 6, 2001, when she slipped on some condensation and fell on her knee. As a result of the fall, the claimant had a meniscus tear and underwent arthroscopic surgery on August 17, 2001 by Dr. Woloszyn. The claimant continued to have difficulties with her left knee following the surgery. On August 23, 2001, Dr. Woloszyn assessed the claimant with a 10% permanent impairment to the knee. The respondents accepted the injury and paid benefits through August 23, 2001, which included payment of medical benefits and permanent partial disability benefits.

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought.

See, Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Conway Convalescent Center v. Murphree, 266 Ark. 985, 585 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. Murphree, supra. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that existed before the injury unless the injury contributes to the condition by accelerating or combining with the pre-existing condition. See, Arkansas Power & Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

The claimant admitted to having had a pre-existing condition with her knee, but she was able to continue working and stated that the previous condition had resolved before the compensable injury occurred on May 6, 2001. The Claimant started working at the respondent employer in 1978. Her last day of employment with the respondent employer was October 9, 2002. Previously, with

the exception of some times of light duty, the claimant had been capable of performing her job duties. As of November 15, 2002, it was recommended by Dr. Woloszyn that the claimant go on permanent long-term disability and Social Security Disability. The evidence showed that following the compensable injury the claimant's condition continued to deteriorate at an accelerated pace.

In Williams vs. L & W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004), the Court of Appeals held that the claimant's compensable injury was a factor in her need for total knee replacement surgery. As in the present claim, the claimant in Williams had received a previous surgery and had pre-existing arthritis in her knee. As a result of her compensable injury, Ms. Williams suffered a torn meniscus. She underwent surgery to repair the torn meniscus, but she continued to experience pain and it was recommended that she receive a total knee replacement.

Although the possibility of a total knee replacement for the claimant had been mentioned in 2000, the doctor wished to try the Synvisc injections first in the hopes that the procedure would relieve the claimant's pain. The Synvisc injections were successful until the time of the compensable injury. However, after the claimant received surgery to correct the torn meniscus, she continued to have

pain which increased to a level that would not allow her to perform her work functions any longer. This indicated that the compensable injury did accelerate and aggravate the claimant's pre-existing condition. Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. § 11-9-508. Billy Chronister v. Lavaca Vault, Full Commission Opinion filed June 20, 1991 (D704562).

It is undisputed that the claimant sustained a compensable injury out of and in the course of her employment. The claimant had prior knee injuries which combined with the present injury to the level where the claimant has a need for a total knee replacement. The fact that the procedure has not yet been scheduled is not proof that the procedure is not necessary, particularly since the claimant testified that she had not pursued the knee replacement surgery for monetary reasons.

Before the compensable injury, the claimant was able to perform her job duties and was pain free. After the injury, the claimant has had to quit her job of 24 years and her doctor has determined that she is disabled to the point that the only employment she would be capable of performing would be a completely sitting job that would only require

use of her upper extremities, hearing, and speech. As such, I find that the claimant's condition did change and that the total knee replacement would be reasonable and necessary treatment.

For the foregoing reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner