

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210188

TIMOTHY O'NEAL,
EMPLOYEE

CLAIMANT

SUGAR HILL FARMS,
EMPLOYER

RESPONDENT

WESTPORT INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MAY 10, 2005

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

Claimant represented by the HONORABLE EDDIE WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE WILLIAM FRYE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 19, 2005. The administrative law judge found that the claimant failed to prove he was entitled to medical treatment from Dr. Jeffrey Evans on and after July 9, 2004. After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge.

I. HISTORY

The record indicates that Timothy Keith O'Neal, age 49,

O'Neal - F210188

treated with Dr. Jeffrey K. Evans in August 2000 for "right knee pain and locking intermittently, worse since a twisting injury with a cow two weeks ago." Radiographic findings on August 28, 2000 indicated "Minimal marginal spurring involving the patellofemoral joint." The impression was "minimal degenerative change." Dr. Evans wrote that x-rays of the right knee were normal. Dr. Evans assessed "right knee lateral meniscus tear" and scheduled a right knee arthroscopy.

In October 2000, Dr. Evans performed a "right knee partial lateral meniscectomy and right knee arthroscopic chondroplasty." Dr. Evans' operative findings indicated:

Grade II chondromalacia of the patella.
Normal medial and lateral gutters. Some fraying of the posterior horn of the medial meniscus, an area of grade III chondromalacia of the weight-bearing surface of the medial femoral condyle. Normal anterior and posterior cruciate ligaments. A radial tear of the middle aspect of the lateral meniscus.

On October 26, 2000, Dr. Evans assessed "right knee lateral meniscus tear and chondromalacia of the medial femoral condyle, surgically treated." Dr. Evans planned to "discontinue sutures, activity as tolerated, and follow up p.r.n."

The claimant informed Dr. Evans in May 2001 that he had "slipped on the ice in December and reinjured his right knee. He notes pain and locking since then. It has been much better over

O'Neal - F210188

the past couple of weeks." Dr. Evans assessed "right knee retropatellar pain syndrome" and treated the claimant conservatively.

The parties stipulated that the claimant sustained compensable injuries to his right knee and right wrist on December 14, 2001. The claimant testified that he fell approximately 15 to 18 feet from a feed bin. An emergency clinical record on December 14, 2001 indicated that the claimant had fallen approximately 15 feet off a feed bin. A physician's diagnosis included "sprain R knee," and the claimant was initially treated conservatively.

It was noted on December 24, 2001, "A big problem is in his right knee now. He has got tenderness of the lower pole of the medial collateral and when you stress that he has got a first degree strain there and he has also got tenderness of the right medial joint line. I think he has got a tear of medial collateral or medial meniscus as well too."

Dr. Evans examined the claimant in January 2002 and assessed "right knee medial meniscus tear."

The record contains a Radiology Report dated January 25, 2002, with the following radiographic findings concerning the claimant's right knee:

Comparison is made with 8-28-00. There is mild medial compartmental narrowing. There

O'Neal - F210188

is some sharpening of the tibial spines.
This represents mild degenerative change. No
fracture or dislocation is evident.

The impression was "Mild degenerative change, as described,
similar to 8-28-00."

A right knee MRI was taken on February 5, 2002, with the
following impression:

1. Mild arthritic changes of the knee with
irregular hyaline cartilage over the medial
femoral condyle and early osteophyte
formation.
2. Complex tear of the posterior horn of the
lateral meniscus and probable fraying of the
free edge and possible additional tear of the
posterior horn of the medial meniscus. Small
joint effusion also present. There is a
small Baker's cyst noted.

Dr. Evans subsequently reported, "MRI shows degenerative
joint disease and medial and lateral meniscus tears;
symptomatically he remains the same." Dr. Evans assessed "Right
knee degenerative joint disease and medial and lateral meniscus
tears." Dr. Evans planned a right knee arthroscopy.

In April 2002, Dr. Evans performed a "right knee partial
meniscectomy and chondroplasty." Dr. Evans reported his findings
at operation:

Examination under anesthesia revealed a full
range of motion with no ligamentous laxity.
Findings at arthroscopy showed grade 2 to 3
chondromalacia of the patella, normal medial
and lateral gutters, grade 2 to 3
chondromalacia of the medial femoral condyle,

O'Neal - F210188

truncated medial meniscus, normal anterior and posterior cruciate ligaments, posterior horn lateral meniscus tear which was unstable into the joint, grade 2 to 3 chondromalacia of the lateral femoral condyle and lateral tibial plateau.

Dr. Evans assessed on April 16, 2002, "Right knee degenerative joint disease and lateral meniscus tear, surgically treated." Dr. Evans planned, "He will follow up on a p.r.n. basis regarding his right knee. There will be no permanent impairment rating generated from this case, and the patient is at maximum medical improvement with regards to his right knee."

The claimant testified that his knee never completely recovered from surgery. "It never did get as strong," the claimant testified, "it never did. There was periods of time in there that it flared up quite often, the pain."

The claimant continued to follow up with Dr. Evans.

An MRI of the claimant's right knee was taken in May 2003, with the following impression:

1. Several cartilaginous defects as described above along with evidence of early osteophyte formation. Findings are consistent with an arthritic process.
2. Complex signal associated with the posterior horn of the lateral meniscus suggesting extensive degenerative change of the meniscus in this region. Possible postoperative change in this region also would be considered. A discrete tear of the menisci is not definitely visualized. If surgery is to be performed, extensive

O'Neal - F210188

evaluation of the inferior surface of the posterior horn of the lateral meniscus would be beneficial.

3. Small joint effusion present.

4. Mild pes anserinus bursitis also suggested.

Dr. Evans wrote to an insurance carrier on October 17, 2003:

This is in response to your letter dated September 30, 2003 regarding Timothy Oneal. I have treated Mr. Oneal for his right knee degenerative joint disease and last saw him on July 22, 2003. He is currently at maximum medical improvement with regard to his right knee. There will be no permanent partial impairment rating generated from the right knee; however, I would ask that you contact Dr. Tom Frazier in Little Rock, as he treated his right wrist with surgery and there may be an impairment rating generated from that portion of the case.

The claimant testified that he began having problems with his knee "locking in a bent position. For example, when I would bend it to put a sock on or bend it to try to step out of a pickup truck, it would lock in that position and I could not unlock it without a lot of force"

The claimant returned to Dr. Evans in February 2004:

Timothy O'Neal comes in follow up, a patient known to me for right knee degenerative joint disease. He notes his right knee has been locking up on him for about the past six weeks. He feels the knee cap is dislocating. He has had no injury to his knee since I last saw him. He denies buckling and effusion.

Dr. Evans' evaluation indicated, "He has a mild effusion on

O'Neal - F210188

the right knee. The patellar apprehension test is positive. The patellar inhibition, and compression tests are negative. There is diffuse medial and lateral joint line tenderness. No ligamentous laxity is noted." Dr. Evans assessed, "Right knee degenerative joint disease and patellar instability." Dr. Evans put the claimant in a "patellar stabilizing unit brace."

In June 2004, Dr. Evans assessed "Right knee degenerative joint disease and patellar instability." Dr. Evans planned to schedule a "right knee arthroscopic lateral retinacular release."

Dr. Evans wrote to Elaine Ivy of Concentra Integrated Services on July 6, 2004:

This is in response to your fax dated 7/1/04 regarding Tim O'Neal. As you know, he is scheduled for a right knee arthroscopic lateral retinacular release. He has long history of symptomatic right knee degenerative joint disease for which he has been followed from a worker's compensation case. He has developed patellar instability since the first part of 2004. There has been no specific injury to his knee during that time; therefore, I cannot relate his patellar instability to a new injury or to his old symptomatic right knee degenerative joint disease. I think that his right knee degenerative joint disease has progressed to the point that his patella has become unstable. I know that this does not really answer the question about when his patellar instability developed and what caused his patellar instability, but I am afraid I do not really have a specific injury or time to hang on to the patellar instability.

The parties stipulated there was "no dispute over the

O'Neal - F210188

payment of medical expenses incurred through July 8, 2004."

Dr. Evans performed a "right knee arthroscopic lateral retinacular release" on July 9, 2004. Dr. Evans reported the following findings at arthroscopy:

Lateral tracking patella, grade 2 to 3 chondromalacia of the patella. Normal medial gutter grade 2 to 3 chondromalacia of the medial femoral condyle and lateral femoral condyle. Post surgical changes of the medial and lateral meniscus with normal anterior and posterior cruciate ligaments.

A pre-hearing order was filed on September 8, 2004. The parties agreed to litigate the following issue: "The claimant's entitlement to the additional medical services provided him by and at the direction of Dr. Jeff Evans on and after July 9, 2004."

The parties deposed Dr. Evans on November 8, 2004. The claimant's attorney questioned Dr. Evans:

Q. In your opinion, was the surgery that you performed on July 9, 2004, necessitated by the effects of his December 14, 2001 injury?

A. Well, absent of an injury during that interval period, I don't have any other way to conclude that. I don't have a cause for the patellar instability just developing de novo, so I would have to assume that it came from the only injury that he's had.

Q. Do you have anything in your file that would indicate that there was a new injury?

A. I have nothing in my file that would indicate that....

Q. So in your opinion within a reasonable degree of medical certainty, was the July 9, 2004 surgery necessitated by the effects of the December 14, 2001 job-related injury?

A. I think it was.

Q. How has he done since the surgery, Doctor?

A. Well, actually, I saw him today....And he's done very well with this last surgery. When I saw him today he was - he's not had any further feelings that the knee cap was going out. He had - a couple or three weeks after surgery he had one episode where the knee locked up on him, just one brief moment, and has not given him any more trouble since then. He's wearing his brace that we got him, you know, when we were treating him conservatively. He's wearing that brace just to give him some extra support in that knee,

The respondents' attorney examined Dr. Evans:

Q. So this instability occurred sometime between July of '03 and when you saw him in February of '04?

A. Correct.

Q. And the indication that he gave you was the instability started bothering him in December of '03.

A. That's correct.

Q. Okay. Would that indicate to you that this was most likely, then, a progression of his degenerative joint disease?

A. It was a - boy, that's a hard question to answer, and I know that's the crux of the whole deposition here. But the problem is, I don't have a specific injury to tie it to, the patellar instability, I'm saying. So I'm not sure when the patellar instability developed.

I haven't seen it in my practice develop as a natural progression of degenerative joint disease.

Q. Well, do you normally see it as a natural progression of an injury two years out?

A. No. I mean, it's a rare, rare thing to have patellar instability, and, in this case in particular, it's very hard to get a handle on it, because we don't have a specific mechanism of injury that caused the patellar instability. We have documented progression of the degenerative joint disease, and that's where - as I said, that's where the crux of the matter is.

Q. Well, let me ask it real simple. If you don't normally see it two years out from an injury -

A. Uh-huh.

Q. - and it occurred sometime a year and a half to two years out from that injury - the injury he had in December of '04 - are you with me so far?

A. Uh-huh....Yes....

Q. Then how would you be able to relate it as being causally related back to that December 14th, 2001 injury?

A. The only way that I can relate it back to the 2001 injury is that I don't have a more specific mechanism of injury to tie it to. And that's what I indicated in Mrs. Ivy's note.

After a hearing, the administrative law judge found, "The claimant has failed to prove by the greater weight of the credible evidence that the medical services provided him for his right knee

O'Neal - F210188

difficulties by and at the direction of Dr. Jeffrey Evans, on and after July 9, 2004, represent 'reasonably necessary medical services' for his compensable right knee injury. Specifically, he has failed to prove by the greater weight of the credible evidence that such medical services were necessitated by or connected with his compensable right knee injury."

The administrative law judge denied and dismissed the claim, and the claimant appeals to the Full Commission.

II. ADJUDICATION

The employer shall 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 must prove by a preponderance of the evidence that he is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). 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 750 (1984).

In the present matter, the Full Commission finds that the claimant proved he was entitled to the controverted medical treatment provided by Dr. Evans. The parties stipulated that the claimant sustained a compensable injury to his right knee on December 14, 2001. Dr. Evans, who had already operated on the

O'Neal - F210188

claimant's knee in October 2000, performed additional surgery in April 2002. The claimant testified that he never experienced full recovery from his compensable injury and subsequent surgery. The claimant testified that at some point his right knee began locking in a bent position. The claimant provided examples of when his knee would lock, such as putting on a sock or stepping out of a vehicle. The claimant did not testify, however, nor does the record indicate, that the claimant sustained a new injury or aggravation to his right knee as a result of activities such as putting on a sock or stepping out of a vehicle.

The Full Commission notes an October 3, 2002 examination by Dr. Evans, at which time the claimant had reported "a few episodes of buckling." The claimant also informed his treating physician on May 8, 2003 that his knee had been "buckling and locking." These medical reports demonstrate that the claimant's physical condition was progressing and worsening as a result of the compensable injury.

Dr. Evans examined the claimant in February 2004 and assessed "right knee degenerative joint disease and patellar instability." Dr. Evans performed a "right knee arthroscopic lateral retinacular release" on July 9, 2004. The Full Commission recognizes Dr. Evans' July 2004 letter to Concentra Integrated Services, in which Dr. Evans wrote, "I think that his right knee degenerative joint

O'Neal - F210188

disease has progressed to the point that his patella has become unstable." Nevertheless, the Full Commission also notes Dr. Evans' subsequent expert testimony at deposition, at which time Dr. Evans stated, "I don't have a cause for the patellar instability just developing de novo, so I would have to assume that it came from the only injury that he's had." Dr. Evans also agreed that the surgery he performed on July 9, 2004, "within a reasonable degree of medical certainty," was causally related to the December 14, 2001 compensable injury.

Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2003), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). In the present matter, the Full Commission attaches significant weight to Dr. Evans' deposition testimony, and that Dr. Evans' opinion addressing compensability was stated within a reasonable degree of medical certainty pursuant to Ark. Code Ann. §11-9-102(16)(B). We also note Dr. Evans' testimony that the claimant had done "very well" following the July 9, 2004 surgery. Evidence of post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. Winslow v. D&B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

O'Neal - F210188

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved additional medical treatment from Dr. Evans was reasonably necessary in connection with the claimant's compensable injury, including but not limited to the July 9, 2004 surgery performed by Dr. Evans. The Full Commission therefore reverses the opinion of the administrative law judge. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a fee of five hundred dollars (\$500). See, Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.