

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F601983 & F306687

SALLY PICKENS, EMPLOYEE	CLAIMANT
HEALTH RESOURCES OF ARKANSAS, INC., EMPLOYER	RESPONDENT NO. 1
COMMERCE & INDUSTRY INS. CO., INSURANCE CARRIER	RESPONDENT NO. 1
NORTH ARKANSAS HUMAN SERVICES EMPLOYER	RESPONDENT NO. 2
WESTPORT INSURANCE CORPORATION INSURANCE CARRIER	RESPONDENT NO. 2

OPINION FILED DECEMBER 7, 2007

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

Claimant represented by the HONORABLE THOMAS W. MICKEL,  
Attorney at Law, Conway, Arkansas.

Respondents No. 1 represented by the HONORABLE JARROD  
PARRISH, Attorney at Law, Little Rock, Arkansas.

Respondents No. 2 represented by the HONORABLE WILLIAM C.  
FRYE, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's  
opinion filed January 3, 2007. The administrative law judge  
found that the claimant did not prove she was entitled to

additional medical benefits. After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion.

I. HISTORY

The record indicates that Sally Ann Pickens, age 51, was hired by the respondents on July 2, 2001. The parties stipulated that Ms. Pickens sustained a compensable knee injury while employed by Respondent No. 2, North Arkansas Human Services, on May 20, 2003. The claimant testified that she fell from a loading dock, "and then 'ker-pop,' and down I went." An emergency department clinical impression on May 20, 2003 was contusion to the right hip and knee. X-rays taken revealed no acute fracture. The record indicates that Respondent-carrier No. 2, Westport Insurance Corporation, was on the risk at the time of the claimant's May 20, 2003 compensable injury.

An MRI of the claimant's right knee was taken on June 5, 2003, with the following impression: "1) Lateral femoral condylar and posterior tibial plateau contusions. 2) ACL tear. 3) Tear of the posterior horn of the lateral meniscus."

Dr. J.D. Allen performed surgery on July 7, 2003: "1. Subtotal lateral meniscectomy. 2. Anterior cruciate grafting with bone patellar tendon bone." The pre- and post-operative diagnoses were as follows: "1. Torn anterior cruciate ligament. 2. Torn lateral meniscus." Dr. Allen subsequently assigned work restrictions involving the claimant's lower extremity, including no squatting, crawling, stooping, kneeling, bending, climbing, prolonged standing or walking.

The claimant testified that she returned to work in late August or early September, but that she had problems moving her right leg. The claimant testified that she suffered from swelling and aching in her knee. Dr. Allen wrote on January 11, 2004, "I am really not quite sure how to pursue the problem with Sally's knee. This lady had a meniscal tear at the time of her ACL substitution. It is certainly possible that the tear has extended, and that is in part responsible for her mechanical symptoms....The only way that I am going to know the answer to that is to take a look. If, indeed, the problem is with her meniscus, then that would certainly be a continuation of her original injury. If it is not, then I don't think it is related to

her original injury and may be something that she has developed as a result of her activity level and weight. That is certainly not necessarily going to help win approval from her Workman's Comp folks but that is the problem as I see it."

Dr. Allen indicated on February 17, 2004 that the claimant's work restrictions were permanent. Dr. Allen testified, "I felt like she had reached maximum medical improvement from her surgery. I listed permanent restrictions for her and discharged her from routine follow-up." Dr. Allen agreed at deposition that he assigned a permanent impairment rating.

The claimant returned to Dr. Allen on August 10, 2004: "Her knee has been bothering her quite a bit, anteriorly primarily in the patellofemoral mechanism. Pain with virtually all of her activities of daily living. On exam today, there is mild effusion and no instability. She has some patellofemoral crepitus....I am going to see her back in six weeks. I will see her back should her symptoms so dictate."

An MRI of the claimant's right knee on September 20, 2004 showed subcutaneous soft tissue edema medially. Dr.

Allen noted on September 30, 2004, "MRI does not show definitive intra-articular pathology that would require surgical intervention. I think for right now we are going to put her on a good exercise program, supervised by the therapist just for some heat, ultrasound, iontophoresis and a little quad strengthening and patellofemoral tracking to see if we cannot get her over this. I want to see her back in a month."

The claimant testified that there was an incident at home on December 14, 2004: "I was going to get something there in the house, and my knee locked. And I went to fall, and I went to grab the Christmas tree to stop my fall, and broke the Christmas tree in half, and down I went." The claimant testified that she thought she hurt her ribs but that she did not injure her right knee.

The claimant returned to Dr. Allen on December 14, 2004: "She is having problems with a catching sensation in her knee. She says she is not sure whether she got up and started to stumble or whether she stumbled and this thing has gotten worse, but she says it has been bothering her off and on now for some time, and it has just gotten to the point now where if she pivots she feels a catching sensation

across the lateral aspect of her knee....I think on the basis of her continued symptoms, we probably need to go back with the arthroscope and look and see if she has some mechanical problem going on in that knee that is causing her current level of symptoms....We need to try to solve that before she falls and injures herself. We will make that request and go from there."

Dr. Allen performed surgery on May 18, 2005: "1. Subtotal lateral menisectomy. 2. Resection of plica." The pre-and post-operative diagnoses were "1. Torn lateral meniscus, right knee. 2. Anteromedial plica." Dr. Allen testified with regard to his findings at surgery, "It was a small tear in the meniscus. It was just an extension, basically, of her original injury....It was - it appeared to be what I would consider to be kind of a degenerative tear, just on the basis of it originated - somewhat went into the bed of her old injury and extended back toward the back, as best I can recall with her."

The claimant's testimony indicated that Respondent-carrier No. 2 controverted payment of the May 18, 2005 surgery, so that her health insurance, Blue Cross/Blue Shield, paid for the surgery.

Dr. Allen noted on May 31, 2005, "She is doing great. Her knee feels much better since we did her debridement. She is going to do her quad strengthening program." The claimant testified, "It wasn't - the constant pain wasn't there anymore. It wasn't swelling as bad. It wasn't catching. The major thing was it wasn't catching on me."

Dr. Allen testified that he saw the claimant on July 5, 2005 "and discharged her from follow-up at that point." The claimant testified that she returned to work for the respondent-employer.

The parties stipulated that the employment relationship existed between the claimant and Respondent No. 1, Health Resources of Arkansas, Inc., on February 12, 2006. The claimant testified that after leaning into a clothes dryer at work, "I heard and felt a snap....in my right knee."

An MRI of the claimant's knee was taken on February 23, 2006, with the following impression: "1. Postop changes are seen on the right knee. 2. Small amount of joint effusion is seen. No fracture or dislocation is identified. 3. No meniscal tear is seen."

Dr. Allen noted on February 28, 2006, "MRI shows no acute changes. We are going to set her up for some

outpatient therapy. I am going to continue her at restricted activity. I've given her some more pain medication and a prescription for her therapy, and I am going to see her back in a month."

A physical therapist noted on March 6, 2006, "On 2/12/06 was reaching into dryer & felt a 'snapping' sensation & had residual swelling. States that her R knee has felt 'unstable' since 2/12/06. Was involved in MVC on 3/4/06 & hit her knee on this occasion as well."

Dr. Allen noted on March 28, 2006, "Her knee is killing her. She has a mild effusion....I know that her MRI did not show any evidence of acute changes, but I think that this lady has something going on in her knee that does not necessarily involve her graft, but I think probably involves either some chondromalacia or a loose body, perhaps a little meniscal pathology that we just missed....I am going to have her stay off the knee, but we are going to put her on to scope. If her symptoms improve, then I will leave her alone." The claimant testified that she had not undergone the third surgery recommended by Dr. Allen.

The claimant agreed at hearing that she left the employment of Respondent No. 1 on March 31, 2006. The

record indicates that the claimant was hired by another employer, Pathfinder, Inc., on June 6, 2006.

A pre-hearing order was filed on September 28, 2006. The claimant contended, among other things, that she sustained a compensable injury to her right knee on May 20, 2003. The claimant contended that she underwent surgery on July 7, 2003, and that she subsequently had an additional knee surgery. The claimant contended that she felt a pop in her right knee while pulling laundry from a dryer on February 12, 2006. The claimant contended that she had learned she would require additional knee surgery, and that "the major cause of her need for treatment is either a new compensable injury, or it is a recurrence of the 2003 injury." The claimant contended that "either or both Respondent carriers are liable for benefits in this matter, and that the respondent carriers should be directed to equally share liability for benefits due to the claimant while the Commission determines the ultimate issue of carrier liability. Claimant takes no position with respect to which carrier, or both carriers, is liable for benefits in this claim. Claimant does contend that all Respondents have controverted all benefits in this claim."

Respondent No. 1, Health Resources of Arkansas, Inc., contended that the claimant "did not suffer a compensable injury on or about 2/12/06. Further, Respondents contend the Claimant's current problems are related to an injury she had on June 5, 2003, which was a work-related injury. It is Respondent's position the prior employer and workers' compensation carrier should be brought in as a party respondent to account for benefits associated with the claimant's current request for medical treatment."

Respondent No. 2, North Arkansas Human Services, contended that it had paid all appropriate benefits due to the claimant. Respondent No. 2 contended that the claimant's February 12, 2006 injury "amounts to an aggravation or new injury and, as such, liability for said injury would not lie with Respondent No. 2. In the alternative, Respondent No. 2 contends that the claimant's current condition and need for treatment is not causally related to her employment in that the claimant's problem, according to Dr. Allen, could be related to her weight...."

The parties agreed to litigate the following issues:

1. Additional medical treatment in the form of additional right knee surgery following an incident at work on February 12, 2006.

2. Aggravation versus recurrence on February 12, 2006.
3. Carrier liability.
4. Average weekly wage and compensation rate on February 12, 2006.
5. Controversion and attorney's fees.
6. Issues identified in the June 27, 2005 prehearing order previously filed in claim no. F306687 and incorporated by reference herein.

The parties deposed Dr. Allen on November 7, 2006. The attorney for Respondent No. 2 examined Dr. Allen with regard to the history of the case and medical treatment, and asked:

Q. As far as your treatment now, do you feel like it is related to what happened to her in February of '06?

A. To the incident with the dryer?

Q. Yes.

A. Most likely. I mean, I would say probably most likely, just on the basis of her history.

The attorney for Respondent No. 1 questioned Dr. Allen:

Q. Have you observed anything new objectively since she returned to your office in February of 2006?

A. The only thing, again, objectively, she had a - I think, as I described in February, she had a moderate effusion. In other words, she had a moderate amount of fluid on her knee, and she was very tender along the medial joint line, along that inside joint line, which is different from what she had before....

Q. The effusion that you saw when you first treated Ms. Pickens in February of '06, how was that different than the normal swelling that she

could expect to have given her previous knee injuries and her weight and level of activity?

A. Not having seen her for quite some time, I mean, she had, as I described it, I think, a moderate effusion. And I'm sure that Sally probably from time to time, if she overdid it, would have a moderate effusion.

Q. Okay.

A. So I can't - I mean, I can't look you in the eye and say, well, it's just because - absolutely that that's the worst effusion that she had had in six months. I don't know that for a fact. I just know that on the day I saw her, after the history that she gave me of that other injury where she felt something pop and then had the effusion, and the fact that she was tender along the inner joint line rather than (sic) the outer joint line, just made me think that something new was going on....

A hearing was held on November 20, 2006. At that time, the claimant withdrew the issue of average weekly wage because temporary total disability was not currently an issue. The claimant reserved the issue of temporary total disability. The claimant contended that Respondent No. 2 paid for the claimant's first knee surgery but had not paid for her second knee surgery. Respondent No. 2 contended that the claimant had sustained an incident at home where she stumbled and developed some new symptoms that ultimately led to the surgery. Respondent No. 2 contended that it was not responsible for benefits after December 14, 2004.

The administrative law judge found, in pertinent part:

3. Claimant's December 14, 2004 fall was an independent intervening cause, absolving Respondents No. 2 from responsibility for Claimant's medical treatment after that date for Claimant's admittedly compensable May 20, 2003 injury.

4. Claimant has not proven by a preponderance of the evidence that her February 12, 2006 symptoms were due to a new compensable injury or due to a recurrence of her May 20, 2003 injury.

5. Instead, a preponderance of the evidence establishes that Claimant's symptoms at issue on February 12, 2006 were a recurrence of the injuries sustained in her non-compensable December 14, 2004 fall.

The administrative law judge denied the claim; claimant appeals to the Full Commission.

## II. ADJUDICATION

The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998), citing *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the

circumstances. *Guidry v. J & R Eads Constr. Co.*, 11 Ark. App. 219, 669 S.W.2d 483 (1984).

Ark. Code Ann. §11-9-102(4)(F) provides:

(i) When an employee is determined to have a compensable injury, the employee is entitled to medical and temporary disability as provided by this chapter....

(iii) Under this subdivision (4)(F), benefits shall not be payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

In the present matter, the administrative law judge found that the claimant did not prove she was entitled to any additional benefits. The ALJ found that the claimant's symptoms were causally related to an "independent intervening cause" on December 14, 2003. The Full Commission reverses this finding. The parties stipulated that the claimant sustained a compensable knee injury on May 20, 2003. Respondent No. 2 was on the risk at the time. Respondent No. 2 paid for surgery by Dr. Allen on July 7, 2003. Dr. Allen performed a second knee surgery on May 18, 2005. The claimant credibly testified that her symptoms improved significantly following the second surgery. Respondent No. 2 refused to pay for this surgery, but Dr.

Allen testified with regard to his findings in the second surgery, "It was just an extension, basically, of her original injury." The preponderance of evidence shows that there was a causal connection between Dr. Allen's surgery performed on May 18, 2005 and the claimant's May 20, 2003 compensable injury. The evidence does not show that there was an independent intervening cause on any date, including December 14, 2004, which absolved Respondent No. 2 from liability for the May 18, 2005 surgery. The Full Commission finds that Dr. Allen's treatment, including surgery on May 18, 2005, was reasonably necessary in connection with the claimant's May 20, 2003 compensable injury.

The parties stipulated that there was an employment relationship between the claimant and Respondent No. 1 on February 12, 2006. The claimant credibly testified that she felt a snap in her knee while reaching into a dryer, during her employment services for the respondent. The Full Commission finds that the claimant proved she sustained a compensable aggravation on February 12, 2006. An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5

(1998). Pursuant to Act 796 of 1993 as codified at Ark. Code Ann. §11-9-102(4)(A)(i), the Full Commission finds that on February 12, 2006 the claimant sustained an accidental injury causing physical harm to the body. The accidental injury arose out of and in the course of the claimant's employment with Respondent No. 1 and required medical services. The injury was caused by a specific incident on February 12, 2006 and was identifiable by time and place of occurrence. The claimant established a compensable injury by medical evidence supported by objective findings, namely, the "effusion" reported in the claimant's right knee after the February 12, 2006 accident. We agree with Dr. Allen's expert testimony that there was post-accident "effusion" following the February 12, 2006 accidental injury. The effusion was causally related to the accident on February 12, 2006. The Full Commission therefore finds that Respondent No. 1 should be liable for reasonably necessary medical treatment provided by Dr. Allen in connection with the compensable aggravation.

Based on our *de novo* review of the entire record, the Full Commission reverses the opinion of the administrative law judge. The Full Commission finds that surgery performed

by Dr. Allen on May 18, 2005 was reasonably necessary in connection with the claimant's May 20, 2003 compensable injury. The claimant did not sustain an independent intervening cause on December 14, 2004. We find that the claimant sustained a compensable aggravation on February 12, 2006. Dr. Allen's treatment recommendations after February 12, 2006 were reasonably necessary in connection with the compensable aggravation. Respondent No. 1 is responsible for reasonably necessary medical treatment provided in connection with the February 12, 2006 compensable aggravation. For prevailing on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002). Respondent No. 1 and Respondent No. 2 are equally liable for the fee.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.