

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F503692

EDITH A. SHIELDS,
EMPLOYEE

CLAIMANT

SWIFTON PUBLIC SCHOOLS,
SELF-INSURED EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 20, 2007

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

Claimant represented by the HONORABLE JOHN BARTELT,
Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed April 20, 2006. The administrative law judge
found that the claimant sustained an injury to her right
knee, and that the claimant was entitled to reasonably
necessary medical treatment and temporary total disability
compensation. After reviewing the entire record *de novo*,
the Full Commission affirms the opinion of the
administrative law judge.

I. HISTORY

Edith Shields, age 71, testified that she had been a schoolteacher for about 25 years. Ms. Shields saw Dr. R. Edward Cooper, Jr. in November 2000 for "recurrence of the pain in her knees bilaterally." Dr. Cooper's impression included "Moderate osteoarthritis of the knees bilaterally."

Dr. Cooper noted in January 2001, "X-rays today, AP bilateral knees weight bearing, lateral/bilateral knees, demonstrate no evidence of fracture, dislocation or other abnormality. There is moderate osteoarthritis of the knees bilaterally."

Dr. Cooper's impression in February 2001 included, "Osteoarthritis of the knees bilaterally with moderate loss of medial joint space doing well with conservative management."

Dr. Cooper's impression in April 2001 was, "Osteoarthritis bilateral knees."

The claimant testified that she began a new teaching job at Swifton High School in August 2003. The parties stipulated that the employment relationship existed on August 14, 2003. The claimant testified that she was working in her classroom: "I had some cardboard lying in

the floor and I stepped on - one piece of cardboard was on top of another, and I stepped on the cardboard to go from one area to the other one, and when I did, it slipped, threw me forward, and I landed on my right knee."

The claimant testified that a custodian, Jo Brinsfield, was present in the room when the accident occurred. The claimant testified that she and Jo Brinsfield went to the school's main building for lunch and saw the school principal, Larry Lee: "Mr. Lee and some more of the teachers were standing there and we walked over to him and I told him at that time that I had fallen....Jo also mentioned that I had fallen and that I had taken a hard fall, I believe is what she said, and I don't remember what was said exactly."

The claimant testified that she did not at that time complete any paperwork with regard to the accident. The respondents' attorney cross-examined the claimant:

Q. On August 14, 2003, did you feel you needed medical treatment that day?

A. I thought, at that time, that I had a severe bruise and that it would be okay.

Q. And, in fact, you told Mr. Lee that you would be all right - that it was going to get better, you thought, right?

A. That is what I told him - that I thought it would get better and be okay....

Q. Before you went to Dr. Roberts, two weeks or so after the fall, did you tell anybody at Swifton that you were going?

A. I don't know, but I would think I would need to tell Mr. Lee that I was going in order to get someone to substitute for me....

Q. My question to you, when I took your deposition, was did you talk to Mr. Lee or anybody at Swifton before going to the doctor. Your response was, I don't remember. Do you agree with that?

A. I still don't remember.

The claimant testified that she made an appointment to see Dr. Roberts. Dr. Randy Roberts saw the claimant on August 25, 2003 and noted, "RTC having fallen on R knee, with increased pain in R knee. This is getting better just recently." Dr. Roberts physically examined the claimant: "R knee with 1+ synovitis; flexion to 100 degrees with mild discomfort, but no instability." (Dorland's Illustrated Medical Dictionary, Edition 28, defines "synovitis" as follows: "inflammation of a synovial membrane. It is usually painful, particularly on motion, and is characterized by a fluctuating swelling due to effusion within a synovial sac.")

X-ray of the claimant's right knee showed "mild OA."
Dr. Roberts gave the following impression: "1. OA R knee, exacerbated by trauma. 2. R PA bursitis."

Dr. Roberts treated the claimant conservatively. The record on August 25, 2003 also included an XR Report: "AP/Lateral R knee: There is some mild loss of articular cartilage medially; tenting, typical of mild OA with some mild progression since previous XR."

The claimant returned to Dr. Roberts on October 30, 2003: "R knee with 1+ synovitis, posterior cyst; mild instability and clicking sensation." Dr. Roberts' impression was, "1. PA bursitis. 2. knee pain, possible internal derangement R knee." Dr. Roberts planned more injections and an MRI of the right knee.

The claimant testified on direct examination:

Q. Were you working every day through this period of time?

A. Most of the time, yes.

Q. Okay. And did you have any other conversations with Mr. Lee with respect to the fall or the injury during September, October, or November, 2003?

A. I'm sure he was aware that I was still having problems, because I would have to take time off to go to the doctor, and to get time off, we had to

get, you know, a substitute, and that had to go through Mr. Lee.

Q. Okay. So, each time you went to the doctor, would you have had to personally talk with Mr. Lee?

A. I would think so.

Q. Okay, and give him, each time you went to the doctor, did you tell him - would you have been required to explain to him why you needed a substitute and why you needed time off?

A. Yes....

Q. Now, the question arises and, I guess, and we might as well go ahead and get into this, is why you didn't actually go to the front office or the superintendent's office or the proper place, wherever that is in the Swifton School District, to actually fill out and file a workers' compensation application for benefits. Would you tell us why that wasn't done until several months later?

A. I wasn't familiar with how workman's comp worked. I honestly thought that I had to be at fault. Why I thought that, I don't know....But I had never been in the situation where I knew anyone who had filed for workman's comp. I worked in the math department in Houston for many, many years, and no one in that department ever had any workman's comp dealings.

The claimant testified that the pain in her knee continuously worsened following the accident and that she limped at school.

An MRI of the claimant's right knee was taken on November 2, 2003, with the following conclusion: "1. Moderate size knee joint effusion, Baker's cyst and probable tears of the posterior horns of the lateral and medial menisci as described. 2. Bone bruise within the subchondral bone beneath the lateral tibial plateau."

The claimant saw Dr. Cooper on November 5, 2003:

X-rays today AP bilateral knees weight bearing demonstrate moderate to severe OA of the knees bilaterally with significant loss of lateral greater than medial joint space of the right knee greater than the left knee. This is not, however, bone on bone type arthritis. The MRI was reviewed and does show what appears to be degenerative tears of the posterior horn of the medial and lateral menisci.

IMPRESSION:

1. OA right knee with degenerative tears of the posterior horn of the medial and lateral menisci with associated moderate OA. Currently I think her mechanical symptoms at least and a significant portion of her pain could be alleviated with arthroscopic surgical procedures. At some point she is going to require knee replacement, however, hopefully we can get her significant mileage prior to pursuing this.

Dr. Cooper scheduled the claimant for "arthroscopy of the right knee with partial medial and lateral meniscectomy with debridement as indicated at the time of surgery."

On November 21, 2003, Dr. Cooper performed an "Arthroscopy of the right knee with partial medial and lateral menisectomies and debridement of osteochondral defects medial and lateral femoral condyles." Dr. Cooper's pre-and post-operative diagnoses were, "Osteoarthritis of the right knee with degenerative right medial and lateral meniscal tears."

The claimant testified that she did not benefit from this surgery.

The claimant returned to Dr. Cooper on December 1, 2003:

She is now 10 days post arthroscopy of the right knee with partial medial and lateral meniscectomy for OA with degenerative medial and lateral meniscal tears. Today she relates that her knee is no better. In fact, it hurts just as much as it ever did. She has a mass in the posterior aspect of her right knee and has some dysesthesias emanating from this area. Today on physical examination there is what appears to be a popliteal cyst located along the medial border of the popliteal space which is minimally tender to palpation. Her incisions are well healed. There is minimal joint effusion. No other change in her physical findings.

Dr. Cooper gave the following impression: "S/P arthroscopy of the right knee with partial medial and lateral meniscectomy now with popliteal cyst and persistent

pain." Dr. Cooper recommended physical therapy and followup in three weeks.

Dr. Roberts administered knee injections on December 2, 2003 and December 4, 2003. Dr. Roberts noted on December 4, 2003, "R knee is swollen, but not warm." His impression was, "1. arthritis R knee, post-arthroscopic surgery."

Dr. David N. Collins saw the claimant on December 31, 2003: "She is having right knee pain at the present time. She was scoped about six weeks ago by an orthopaedist in Jonesboro. She was told that she had arthritis." Dr. Collins' impression was "Right knee, possible osteonecrosis," and he recommended a new MRI.

Dr. Collins reported on January 7, 2004:

Ms. Shields returns in follow up of her MRI. She brings her pervious (sic) MRI, as well as plain films. Her history is once again reviewed. She had a slight injury. She did have a fall with a knee injury and saw Randy Roberts, M.D. Dr. Roberts is a rheumatologist in Jonesboro who obtained plain films and ordered an MRI of the knee on 11/2/03....This revealed a moderate sized knee effusion, a Baker's cyst and posterior tears of the menisci. In addition, there was a bone within the subchondral bone beneath the lateral tibial plateau. I do not know which orthopaedist scoped her knee. Apparently findings of arthritis were identified.

She returns today following MRI of the knee. I have reviewed the MRI and its report and have re-examined her right knee. The MRI report is in her chart. Features of the report which are significant include abnormal signals of the lateral tibial plateau and lateral femoral condyle, particularly an abnormal focus consistent with osteonecrosis. Joint effusion, popliteal cysts and meniscal changes are observed.

I believe the most significant findings of the changes within the abnormal signs are noted in the lateral femoral condyle and the tibial plateau.

I do not have her operative note. I do not know whether she had electrothermal treatment of the joint. Concerns exist regarding osteonecrosis which is now at a stage that is radiographically apparent, as well as the changes throughout the lateral femoral condyle and the previous and existing changes of the lateral condyle.

She is having intractable pain. I do not think she would benefit from arthroscopic treatment, injection treatment and is likely to require implant arthroplasty. I would be concerned regarding the utilization of uni-compartmental arthroplasty on the basis of inconsistent opportunity for outstanding support of the components in osteonecrotic bone. In that regard, I believe that total knee arthroplasty would be indicated.

I would like a second opinion from Kenneth Martin, M.D. Specifically, it is important to have additional thought relative to the etiology of her pain, how it may or may not be related to her injury, her previous operation and current treatment recommendations.

The claimant testified that the last date she worked before undergoing additional surgery was "the last week in

January....The pain was so bad, I got to the point I just couldn't stand on it any more, and I was off about a week before he did the surgery."

The record indicates that the claimant was admitted to Baptist Health Medical Center on January 27, 2004. Dr. Barry Baskin dictated the following on February 2, 2004:

This is a 68-year-old white female from Swifton, Arkansas, referred by Dr. Martin for a preoperative clearance and preparation of a total versus a partial knee replacement on February 2, 2004 at Baptist Health Medical Center. She has had a history of progressive arthritis in her knee. Dr. Martin has seen her recently with x-rays revealing degenerative changes. She has been educated about the benefits and risks of knee replacement surgery and has been referred to me for preoperative clearance and postoperative medical and rehabilitation needs.... This is a nice 68-year-old lady with a history of coronary artery disease, hypertension, adult onset diabetes, osteoporosis and osteoarthritis. I found her to be a suitable candidate for surgery, pending the results for preoperative studies.

Dr. Kenneth Martin performed a "Right total knee arthroplasty, Implex posterior stabilized" on February 2, 2004. Dr. Martin's pre- and post-operative diagnoses were, "Osteoarthritis right knee secondary to avascular necrosis lateral femoral condyle."

The claimant followed up with Dr. Baskin and Dr. Martin post-surgery.

The claimant testified with regard to her physical recovery, "For the first month, I did great, and then the soreness - it got to the point that the soreness did not continue to dissipate. It remained....And still remains."

The claimant testified that she decided to file a claim after talking to a cousin who had worked for the California Division of Worker's Compensation.

On July 27, 2004, the claimant signed a Form AR-N, Employee's Notice Of Injury. The claimant wrote that she had sustained an accident at 11:00 a.m. on August 14, 2003, and that she had injured her right knee. The claimant wrote, "I stepped on some cardboard lying on the floor. It skipped backward and I fell forward, landing on my right knee." The claimant wrote that her supervisor was Larry Lee and she listed Jo Brinsfield as a witness.

The claimant testified that Dr. Martin cleared her to return to work in August 2004. The claimant's testimony indicated that her department at Swifton High School was closed, and that she subsequently began working full-time for Leachville Schools.

Dr. James W. Bryan, IV examined the claimant in December 2004 and gave the following impression: "1.

Bilateral leg numbness consistent with diabetic neuropathy. Exam and history do not suggest claudication although microvascular ischemia could contribute to her symptoms. 2. Intact right knee arthroplasty. 3. Obesity contributing to condition. 4. Inadequate control of hypertension."

Dr. Baskin stated in February 2005, "My impression is that Ms. Shields has diabetic neuropathy. There are medicines that might help with that such as Neurontin. She needs to get her blood pressure under control."

A pre-hearing order was filed on January 24, 2006. The claimant contended, among other things, that she sustained a compensable injury, and that she was entitled to medical care and temporary total disability. The respondents contended that the claimant "did not suffer a compensable injury on or about 8/14/03. Further, Respondents contend the Claimant failed to give notice of any work-related injury until 7/27/04, and Respondents should not be liable for benefits and expenses incurred by the Claimant prior to actual notice of an intent to claim a workers' compensation injury. Lastly, Respondents contend the Claimant's need for medical treatment is associated with pre-existing and

underlying conditions and not a compensable work-related injury."

A hearing was scheduled "on the issues of compensability (temporary total disability and medical benefits) and controverted attorney fees."

A hearing was held on March 3, 2006. The claimant testified with regard to her right knee, "I can walk. It's not painful to walk if I don't stand on it for long periods of time. It is still sore, but - I find that it is deteriorating some."

The administrative law judge found, in pertinent part:

4. On August 14, 2003, the claimant sustained an injury to her right knee arising out of and in the course of her employment.
5. The claimant was temporarily totally disabled for the periods beginning January 27, 2004, and continuing through August 2004.
6. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of August 14, 2003.

The respondents appeal to the Full Commission.

II. ADJUDICATION

A. Compensability

Ark. Code Ann. §11-9-102(4)(A) defines "compensable injury":

(i) An accidental injury causing internal or external physical harm to the body ... arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16).

The claimant's burden of proof shall be a preponderance of the evidence. Ark. Code Ann. §11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003), citing *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

The administrative law judge found in the present matter, "On August 14, 2003, the claimant sustained an injury to her right knee arising out of and in the course of her employment." The Full Commission finds that the claimant proved she sustained a compensable injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). The claimant credibly

testified that she slipped and fell at work on August 14, 2003. The respondents do not dispute that the claimant fell in August 2003. There are objective medical findings in the record. Dr. Roberts saw the claimant on August 25, 2003 and noted synovitis, i.e., inflammation and swelling, in the claimant's right knee. An MRI of the claimant's right knee in November 2003 showed among other things, a moderate-size knee joint effusion. Dorland's generally defines "effusion" as "escape of fluid into a part or tissue." This finding of effusion in the claimant's right knee was not within her voluntary control. There were no such objective medical findings of record before the August 14, 2003 workplace accident. The Commission recognizes that the claimant suffered from a pre-existing arthritic condition in her knees. However, the evidence before us indicates that the post-accident findings of synovitis and effusion were the result of the claimant's fall at work rather than her pre-existing degenerative condition.

The Full Commission finds that the claimant proved she sustained an accidental injury on August 14, 2003, and that the injury caused physical harm to the body. We find that the injury arose out of and in the course of the claimant's

employment with the respondents, and that the injury required medical services and resulted in disability. We find that the injury was caused by a specific incident and was identifiable by time and place of occurrence. We find that the claimant established a compensable injury by medical evidence supported by objective findings. The Full Commission thus finds that the claimant proved she sustained a "compensable injury" pursuant to Ark. Code Ann. §11-9-102(4) (A) (i) and following.

B. Notice

Ark. Code Ann. §11-9-701(a) provides:

(1) Unless an injury either renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury....

(b) (1) Failure to give the notice shall not bar any claim:

(A) If the employer had knowledge of the injury or death;

(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or

(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given....

In the present matter, the claimant testified that she slipped and fell at work on August 14, 2003. The claimant testified that she informed school principal Larry Lee on the date of accident that she had fallen. In their brief on appeal, the respondents do not dispute that the claimant told her supervisor on August 14, 2003 that she had fallen. Yet, the respondents also argue that they did not receive notice until the claimant signed a Form AR-N on July 27, 2004. In accordance with Ark. Code Ann. §11-9-701(b)(1)(A), the Full Commission finds that the employer had knowledge on August 14, 2003 that the claimant had sustained an injury. The claimant is therefore not barred from receiving worker's compensation before the claimant signed the July 27, 2004 Form AR-N.

C. Medical Treatment

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 she is entitled to 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. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, the Full Commission finds that the claimant proved she was entitled to all of the medical treatment of record, including the surgeries performed by Dr. Cooper and Dr. Martin. We have determined *supra* that the claimant proved she sustained a compensable injury on August 14, 2003. We have also recognized that the claimant clearly suffered from a pre-existing arthritic condition in both knees. However, the Full Commission finds, in this case, that the compensable injury aggravated the claimant's degenerative condition and led to the need for surgery from Dr. Cooper and Dr. Martin. We find that this medical treatment was therefore reasonably necessary in connection with the compensable injury.

D. Temporary Disability

An employee who has suffered a scheduled injury is to receive temporary total disability compensation during her healing period or until she returns to work. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). "Healing period" means "that period for healing of

an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). Whether an employee's healing period has ended is a factual determination for the Commission. *Armstrong, supra*.

In the present matter, the administrative law judge essentially found that the claimant proved she was entitled to temporary total disability from January 27, 2004 through August 2004. The Full Commission affirms this finding. We have determined that the claimant sustained a compensable injury to her right knee on August 14, 2003. The claimant subsequently treated with Dr. Roberts, Dr. Cooper, and Dr. Collins. The claimant testified that, by the last week of January 2004, "The pain was so bad, I got to the point I just couldn't stand on it any more, and I was off [from work] about a week before he did the surgery." The claimant was admitted to a hospital on January 27, 2004 and was prepped for surgery to her right knee. Dr. Martin performed a right total knee arthroplasty on February 2, 2004. The claimant testified that Dr. Martin released her to return to work in August 2004, and that she subsequently began working for another school district.

The record in the present matter indicates that the claimant remained within a healing period for her compensable injury no later than January 27, 2004, and that she did not return to work from January 27, 2004 until August 2004. The Full Commission therefore affirms the administrative law judge's finding, "The claimant was temporarily totally disabled for the periods beginning January 27, 2004, and continuing through August 2004."

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable injury to her right knee on August 14, 2003. The Full Commission finds that the employer had knowledge of the claimant's injury no later than August 14, 2003. We find that the claimant proved the medical treatment of record was reasonably necessary. We find that the claimant proved she was entitled to temporary total disability compensation from January 27, 2004 through August 2004. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred

dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner