

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F510359

LERESA BRADY, EMPLOYEE	CLAIMANT
ST. BERNARD'S MEDICAL CENTER, EMPLOYER	RESPONDENT NO. 1
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2

OPINION FILED APRIL 30, 2008

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

Claimant represented by the HONORABLE C. MICHAEL WHITE, Attorney at Law, North Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE BETTY J. DEMORY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents No. 1 appeal an opinion and order of the Administrative Law Judge filed February 4, 2008. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 1, 2005, the employment relationship existed between the parties when the claimant

sustained an accidental fall resulting at work resulting in compensable injuries to her head, left leg, and left knee.

3. On March 1, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$286.00/\$215.00, for temporary total/permanent partial disability based on \$429.00, average weekly wage.

4. In addition to any prior period of total incapacitation the claimant was temporarily totally disabled for the period beginning December 21, 2006, and continuing through the end of her healing period, a date to be determined.

5. The medical treatment, in the form of a left total knee arthroplasty, in reasonably necessary in connection with the claimant's March 1, 2005, compensable injury, pursuant to Ark. Code Ann. §11-9-508. Respondent #1 shall pay all reasonable hospital and medical expenses arising out of the injury of March 1, 2005.

6. Respondent #1 has controverted the payment of temporary total disability benefits subsequent to the point in time said benefits were last paid to the claimant, and has controverted the payment of medical benefits, in the form of a left total knee arthroplasty, subsequent to January 24, 2007.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the February 4, 2008 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion 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

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant is entitled to additional temporary total disability benefits from December 21, 2006, and continuing through a date yet to be determined as well as finding that medical treatment in the form of a left total knee arthropasty is reasonable and necessary medical treatment in connection with the claimant's March 1, 2005, compensable injury. Based upon my de novo review of the entire record, and without giving the benefit of the doubt to either party, I find that the claimant has failed to meet her burden of proof on these issues.

The claimant sustained an admittedly compensable injury to her head, left leg and left knee on March 1, 2005, when she fell at work. As a result of these injuries the claimant received appropriate medical treatment and was released to return to work by March 15, 2005. X-rays taken of the claimant's left knee on the date on injury revealed no fractures but did disclose the presence of severe degenerative disease . A physical examination of the left knee at that time

revealed a 2 cm mild abrasion in the anterior left kneecap and moderate tenderness with passive range of motion. The claimant was diagnosed with contusions of the left knee and scalp and treated conservatively. By March 17, 2005, the claimant advised her treating physician that her pain had improved and that she only had pain at night and after work. The claimant was released from treatment at that time.

After being released in March, the claimant did not seek any additional treatment for her left knee until September. However, she was seen for treatment of varicose veins bilaterally on April 1, 2005, and weight loss assistance on July 25, 2005. No mention was made of claimant's left knee injury at those times. When the claimant did seek additional treatment for her left knee on September 23, 2005, she presented with a history of "knee pain severe at times x 2wks worse last pm." The claimant ultimately underwent arthroscopic knee surgery to debride a bone spur and to clean up the ACL. After recovering from this surgery, the claimant returned to work for respondent employer and continued to work until December 2006. By this time, the claimant's physicians were recommending total knee replacement.

Dr. Earl Peeples performed an independent medical examination at respondents' request. Interestingly, Dr. Peeples noted that the claimant's radiographic studies of both knees revealed "amazingly symmetric" findings of advanced degenerative changes. Dr. Peeples's report specifically states:

Anatomically there are no documented exacerbation of radiographic differences comparing right and left radiographs as of this date. Both knees show severe and advanced degenerative changes and both knees would be anticipated to require some surgical intervention at some point in the future assuming she has a normal lifespan.

Claimant has the burden of proving by a preponderance of the credible evidence that medical treatment is reasonable and necessary. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion, Feb. 17, 1989 (D612291); B.R. Hollingshead v. Colson Caster, Full Commission Opinion, Aug. 27, 1993 (D703346). Employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of employees' injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). In workers' compensation cases, the burden rests upon the claimant to establish his/her claim for compensation by a preponderance of the evidence. Kuhn v. Majestic Hotel,

50 Ark. App. 23, 899 S.W.2d 845 (1995); Bartlett v. Mead Container Board, 47 Ark. App. 181, 888 S.W.2d 314 (1994). 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 Commission Opinion, Dec. 13, 1989 (D512553). A pre-existing disease or infirmity does not disqualify a claim for disability benefits or medical treatment if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability or need for the medical treatment sought. See, Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark. App. 1979); St. Vincent Infirmary Med. Ctr. 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, Ark. Power & Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

In the present claim, I find that the claimant had a pre-existing condition of severe bilateral degenerative disease in her knees at the time of her injury on March 1, 2005. The x-rays of the claimant's left knee taken on the date of her injury clearly revealed the nature of this pre-existing condition. Despite the claimant's compensable injury, subsequent x-rays of both knees revealed "amazingly symmetric" findings of degenerative changes bilaterally, thus evidencing the fact that the claimant's March 1, 2005, left knee injury did not aggravate or accelerate the degenerative process. Furthermore, the evidence reveals that the claimant's left knee injury had improved and that she had been restored to her pre-existing condition when she was released from treatment on March 17, 2005. The claimant did not seek any additional treatment for her left knee, despite seeking medical treatment for weight loss and varicose veins until she developed a new

onset of pain in September 2005. The claimant provided a history at that time of left knee pain for the past two weeks, clearly indicating that her present knee pain was not a continuation of her compensable left knee injury. Therefore, I find that the claimant's present need for a total knee replacement is not reasonable and necessary medical treatment in connection with her compensable injury. The claimant's minor injury was only a temporary aggravation as evidenced by not only the fact that she was restored to her previous condition and did not require medical treatment for over six months but also by the fact that when she did seek medical treatment the claimant provided a specific history of a recent onset of symptoms.

I further find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits. As I find that the claimant's present need for medical treatment is not causally related to her compensable injury, I find that the claimant's present disability is likewise not related. However, the majority has awarded the claimant additional temporary total disability benefits. Regardless of whether the need for a total knee replacement is compensable, the

overwhelming evidence fails to disclose that the claimant's compensable knee injury is the cause of her present disability. Not one of the claimant's treatment physicians have removed her from work as a result of her knee. In fact, in his independent medical report, Dr. Peeples specifically stated that the claimant was not disabled from her left knee and that she could work full duty. Likewise, the claimant's treating physician declared that the claimant was not within her healing period in February of 2007, and that she was at maximum medical improvement until she undergoes surgery. Accordingly, I find that the claimant has failed to prove by a preponderance of the evidence that she remains within her healing period and is totally disabled for the period of time in which temporary total disability benefits have been awarded.

Therefore, for those reasons set forth herein, I must respectfully dissent.

KAREN H. MCKINNEY, Commissioner