NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602818

DEBORAH K. NORMAN, EMPLOYEE	CLAIMANT
FLASH MARKETS, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 14, 2008

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

Claimant represented by the HONORABLE MARC I. BARETZ, Attorney at Law, West Memphis, Arkansas.

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed January 23, 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 February 13, 2006, the relationship of employee-employer-carrier existed among the parties when the claimant sustained a compensable left knee injury.

3. The claimant earned an average weekly wage of $515.00, which generates compensation benefit rates of $344.00/$258.00, for temporary total/permanent partial disability.

4. The claimant was temporarily totally disabled for the period beginning February 14, 2006, and continuing through March 23, 2007.

5. Respondents failed to provide the claimant with a Form AR-N, Employee's Notice of Injury, pursuant to Ark. Code Ann. § 11-9-514(c)(1), following her February 13, 2006, compensable injury. Medical treatment rendered to the claimant by and pursuant to the directions of Dr. W. L. Moffatt between October 10, 2006, and July 25, 2007, was reasonably necessary in connection with the February 13, 2006, compensable left knee injury.

6. Medical treatment rendered to the claimant by and at the directions of Dr. W. L. Moffatt on and after July 25, 2007, was reasonably necessary in connection with the claimant's February 13, 2006, compensable injury.

7. The respondents shall pay all reasonable necessary and related hospital and medical expenses arising out of the claimant's compensable injury of February 13, 2006.

8. The respondents have controverted the payment of temporary total disability benefits subsequent to June 19, 2006, and the payment of medical benefits subsequent to October 10, 2006.

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 January 23, 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.

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OLAN W. REEVES, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she was entitled to additional medical treatment. Based upon my *de novo* review of the record, I find that the claimant has failed to meet her burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant was employed by the respondent employer as a manager. Her duties required her to make bank deposits. The claimant was making a bank deposit on February 13, 2006, when she tripped striking both of her knees on a curb. The claimant sought medical treatment the next day at the Crittenden Memorial Hospital. Both

of her knees were x-rayed and the x-rays were interpreted as being normal. The claimant underwent an MRI on February 28, 2006. The claimant was referred to Dr. Samuel Meredith who examined her on April 5, 2006. Dr. Meredith x-rayed the claimant's knees again and determined there was no obvious fracture. He also reviewed the claimant's MRI and noted that it was "not impressive."

The claimant came under the care of Dr. Robert Riley Jones at Memphis Orthopaedic Group. His report of May 23, 2006, reflects his review of the claimant's MRI:

> That MRI was read as a very small acute non full thickness tear involving the anterior inferior portion of the posterolateral band of the anterior cruciate ligament. There is some osteoarthritic chondromalacic thinning of the lateral and medial femoral articular surfaces.

Dr. Jones wanted to rule out reflex sympathetic dystrophy (RSD) so he recommended the claimant undergo a triple phase bone scan. The claimant underwent the bone scan on May 26, 2006. Dr. Jones noted that there was no evidence of RSD. In a May 30, 2006 note, Dr. Jones noted that the claimant had full unrestricted range of motion and that there was no effusion, swelling or "real tenderness." Dr. Jones

opined that the claimant had a contusion and she could return to regular duty.

The claimant returned to Dr. Meredith on June 12, 2006. Dr. Meredith noted that the claimant demonstrated “anxiety and amplified pain responses.” Dr. Meredith indicated that the claimant’s bone scan showed mild osteoarthritis and no RSD. He failed to note any swelling or effusion. He opined that the claimant was at maximum medical improvement without any permanent anatomical impairment. She returned to Dr. Meredith on July 10, 2006, but he told the claimant she would not benefit from any further orthopedic treatment.

The claimant was referred to Dr. Terence Braden. She saw Dr. Braden on July 25, 2006 and told him that she had been to the emergency room and had to have her pants leg cut off due to the swelling in her knee. Dr. Braden did not see any evidence of effusion and he wanted to review the emergency room reports showing that she had to have her pants leg cut off. Dr. Braden ordered physical therapy for the claimant.

The claimant called Dr. Braden’s office on August 8, 2006. She complained that the physical therapy was causing her knee to swell up. He asked her to come to his office the next day at 11:15 a.m. At that visit, Dr. Braden saw no evidence of swelling or effusion. He

contacted the physical therapist who reported no swelling in therapy and that the claimant gave poor effort during her sessions.

The claimant returned to Dr. Braden's office on September 1, 2006. The claimant told Dr. Braden that she had slipped getting out of the bathtub and struck her knee on the commode. Dr. Braden told the claimant that there was no objective evidence to support her continued complaints of pain. He noted that she had received "adequate and extensive treatment." He opined that the claimant had reached maximum medical improvement. He released the claimant to full duty with no permanent anatomical impairment.

The claimant continued to seek medical treatment from Dr. Jones. In an employment report dated September 19, 2006, he indicated that the claimant had a fall resulting in her striking against an object and this incident occurred at home. He sent the claimant for another MRI. This MRI was interpreted as normal. He released the claimant to regular duty with no permanent anatomical impairment on October 3, 2006.

The claimant then began seeking medical treatment on her own from Dr. W. L. Moffatt. Ultimately, she asked for a change of physician from the Commission and it was granted to Dr. Moffatt. Dr. Moffatt performed

surgery on the claimant’s knee on February 21, 2007. The change of physician order was granted in July of 2007.

At this time, the claimant is seeking to have the medical treatment she has received from Dr. Moffatt paid for and additional temporary total disability benefits. In my opinion, the claimant has failed to meet her burden of proof.

The first issue to be addressed is the claimant’s request to have her treatment with Dr. Moffatt paid for. First, and foremost, the claimant was not granted a change of physician until July of 2007. At the most, the respondent’s are not responsible for treatment until the change of physician was granted because the claimant received unauthorized medical treatment. The Administrative Law Judge found that the change of physician rules did not apply because the claimant did receive the AR-N. However, the claimant was in a managerial position with the respondent employer. For her to now claim that she did not receive the AR-N is disingenuous at best. The claimant was the store manager and was intimately familiar with workers’ compensation procedures. The following is enlightening:

> Q. When did you become the store manager?
>
> A. I’m not sure of the date on that.

Q. Has it been several years?

A. It's been a few years.

Q. So as the manager, are you in charge of other employees?

A. Yes, ma'am.

Q. So you're familiar with the process of filing a workers' comp claim, correct?

A. Yes, ma'am.

Q. You're familiar with all the paperwork, right?

A. Yes, ma'am.

Q. And in fact did you fill out your own paperwork for your injury?

A. Yes, ma'am.

The claimant admitted that she was the one that completed her paperwork to report her injury. In fact she is the very person to provide information to an injured employee if an accident were to happen. For there to be a finding that she did not receive the notice of the change of physician rules and to find that the rules are not applicable because of her failure to be provided those rules is egregious in my opinion. I submit, the claimant cannot have it both ways. Therefore, if there is a finding that the treatment by Dr. Moffatt was reasonable and necessary medical treatment, a finding I do not make, I find that the

respondent's are not responsible for payment until July 6, 2007, when the change of physician order was entered.

The next issue that must be decided is did the claimant prove by a preponderance of the evidence that she is entitled to additional medical treatment by Dr. Moffatt. In my opinion, the claimant has failed to meet her burden of proof.

Ark. Code Ann. §11-9-508(a)(Supp. 2005) provides that an employer shall provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). However, employers are only liable for medical treatment and services which are deemed reasonably necessary for the treatment of the employee's injuries. DeBoard v. Colson Co., 20 Ark. App. 166, 725 S.W.2d 857 (1987). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of the compensable injury. Wal-Mart, supra; GEO Specialty Chemical v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000); Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. Wackenhut Corp. v. Jones, 73

Ark. App. 158, 40 S.W.3d 333 (2001); White Consolidated Indus. v. Galloway, 74 Ark. App. 13, 45 S.W.3d 396 (2001); Air Compressor Equipment v. Sword, 69 Ark. App. 162, 11 S.W.3d 1 (2000); Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996).

Further, when the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury. Wackenhut, supra. The basic test is whether there is causal connection between the two episodes. Id. 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. Gardner v. Area Agency on Aging, Full Commission Opinion, January 4, 2006 (Claim No. F302438); Jones v. Seba, Inc., Full Commission Opinion, December 13, 1989 (Claim No. D512553).

The evidence demonstrates that the claimant was evaluated and treated by three different physicians and none of these physicians could find anything objectively wrong with the claimant. The claimant was released to return to work without restrictions and without permanent anatomical impairment by Dr. Meredith, Dr. Jones and Dr. Braden. All three of these highly

qualified physicians opined that the claimant did not have any swelling or effusion in her knee. In fact, all of her testing came back normal. Simply put, there is no evidence that the claimant's problems with her knee in which she sought treatment from Moffatt was related to her compensable accident of February 13, 2006.

Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

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KAREN H. McKINNEY, Commissioner