

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F704899

TONI R. GREER, EMPLOYEE	CLAIMANT
OZARK OPPORTUNITIES, EMPLOYER	RESPONDENT
GUARANTY INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 8, 2009

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

Claimant represented by the HONORABLE FREDERICK S. "RICK" SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed, in part, and reversed, in part.

OPINION AND ORDER

The respondents appeal an Administrative Law Judge's September 23, 2008 opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury on May 2, 2007 and that the medical treatment she received was reasonable and necessary. The claimant appeals the finding that she failed to prove by a preponderance of the evidence that the surgery proposed by Dr. Knox is reasonable and necessary medical treatment of her compensable injury.

After a de novo review of the entire record, the Full Commission affirms the opinion of the Administrative Law Judge that the claimant proved by a preponderance of the evidence that she suffered a compensable injury to her left knee on May 2, 2007, and that the care she received for her left knee injury was reasonable and necessary. However, the Full Commission reverses the Administrative Law Judge's finding that she failed to prove by a preponderance of the evidence that she is entitled to the surgery recommended by Dr. Knox. The Full Commission awards the claimant the additional medical treatment recommended by Dr. Knox.

I. PROCEDURAL HISTORY

A hearing was held on June 25, 2008, and on September 23, 2008, the Administrative Law Judge filed his opinion. The Administrative Law Judge determined that the claimant had met all of the elements of a compensable injury. The medical records showed effusion and crepitus, both objective findings, on May 3. The medical records and testimony showed that the injury caused internal harm requiring medical treatment. The injury arose out and in the course of her employment, where the claimant testified in detail about the events surrounding her injury, the testimony contradicting the claimant's story was not convincing, and where other

witnesses both related and un-related to the claimant confirmed that she was limping the afternoon of the injury where she had not limped before that time. The judge did not rely on Dr. Knight's July 9, 2007 opinion that the May 2 incident was the cause of her injury, because that document identifies severe swelling and spasms, findings absent from the medical records.

In his opinion, the Administrative Law Judge also determined that the treatment the claimant received for her left knee injury was reasonable and necessary, and thus the responsibility of the respondents. However, the Administrative Law Judge found that Dr. Knox's proposed surgery was not reasonable and necessary. The Administrative Law Judge found that, because the MRI did not reveal a meniscal tear, and because Dr. Knox could not correlate her pain and soreness, there was no causal connection shown between the compensable injury and the cyst, and therefore, the respondents were not responsible for the surgery to treat the cyst.

II. ADJUDICATION

A. COMPENSABILITY.

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. §11-9-102(4) (A) (i) (Repl.

2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (4) (D), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

The claimant provided a detailed explanation of her injury, in both her deposition and her hearing testimony, of the incident on May 2, at which time the claimant was descending stairs to reach a student who had hurt himself when she experienced pain in her left knee. The claimant explained that when she handed her supervisor a washcloth for the student, she commented to the supervisor that she had hurt her knee. She also testified that she experienced pain and swelling, and that she limped for the remainder of the day. Her supervisor, Ms. Teegarden, did not recall that the claimant told her about the injury while she was tending

the injured student, but at that time, Teegarden was tending a child who had struck his head and was bleeding, while her other students, up to 13 of them, were on the stairs as well. Also, Teegarden did recall that the claimant told her about the injury at breakfast on May 2, while the claimant testified that she reported a second episode of pain and buckling on the morning of May 3 at breakfast. It appears that she was confused about what happened on each day. Teegarden testified that the claimant did get her a washcloth for the injured student and that the claimant was limping on May 2. The Full Commission credits the claimant's testimony, and given the portion of the testimony of Teegarden which coincides with the claimant's, the Full Commission disregards Teegarden's testimony that she did not report the incident on May 2 as a matter of confusion on her part.

The claimant's explanation of the incident was also bolstered by the testimony of Audra McLester, who observed both the student's injured forehead and the claimant's limp on May 2. McLester testified that the claimant explained that she hurt her knee on the stairs while taking a washcloth to Teegarden for the student. McLester was not related to the claimant but had a friendly relationship with her through the Headstart

program. McLester testified that she had never observed that the claimant had a knee problem prior to May 2. Similarly, three other witnesses (neighbor Donna Ellis, sister-in-law Sandra Greer, and husband James Greer) testified that the claimant related that she was injured at work on May 2. Her sister-in-law and her husband related that the claimant's knee was swollen, that she was in pain, and that she needed assistance on May 2 around the house.

The respondents focused on the fact that the claimant claimed an injury on May 2 while her Form N only described the incident which she testified occurred on May 3. The Form actually gave a date of May 4 for the date of injury and the date the form was completed. The claimant explained that at the time she completed the form, she was in a great deal of pain. Importantly, the "received" stamp also has the date May 4. The claimant testified at deposition that she had to mail the Form N to the Harrison office. The "received" stamp indicates that the Form N was received on May 4, which means that it was mailed prior to May 4. The Full Commission finds that the claimant's testimony that she completed the Form N on May 3, describing an injury that occurred on May 3, is credible, and that the date of injury and date of her signature were recorded in error.

Jane Bueg, the human resource coordinator for the respondent employer, testified that she spoke with the claimant on May 3 when the claimant called to report her injury. She testified that the claimant only reported an injury on that date, when her knee buckled as she descended the stairs. This is consistent with the claimant's testimony regarding the Form N and the phone call that she was focused on what happened on May 3. The preponderance of the evidence shows that the claimant was injured on May 2 at work, that her knee buckled again on May 3 at work at which time she filled out the Form N and made the call to Bueg.

Certainly, the claimant's activities, walking down the stairs to help her supervisor care for an injured child on May 2 and walking down the stairs accompanying students on May 3, were both in furtherance of the interests of the respondent employer. The Full Commission finds that the claimant proved by a preponderance of the evidence that her injury on May 2 arose out of and in the course of her employment and that the injury was caused by a specific incident and is identifiable by time and place of occurrence.

The claimant testified that she suffered swelling and pain on May 2, immediately following the incident, which did not resolve but actually intensified

after the second incident on May 3. All of the witnesses who were in the claimant's presence on May 2 confirmed that the claimant was limping on that date. The claimant presented objective evidence of injury in the form of Dr. Wright's office notes from May 3, 2007 which record his observation of mild effusion and mild crepitus. Both effusion and crepitus can be objective findings. See Pickens v. Health Resources of Ark., Inc., Full Commission Opinion filed December 7, 2007 (AWCC Nos. F601983 and F306687, and Goss v. Barker Engr., Full Commission Opinion filed June 19, 2002 (AWCC No. E910877. The claimant required treatment including medication and the use of a knee immobilizer and crutches. The claimant, her husband, her neighbor and her sister-in-law credibly testified that the pain and swelling in her knee prevented her from returning to work. The Full Commission finds that the claimant has proven by a preponderance of the evidence that the injury caused internal physical harm to the body which required medical services and resulted in disability, and that the effusion and crepitus noted by Dr. Wright on May 3 were objective evidence establishing her injury.

The Full Commission finds that the claimant has proven that she sustained a compensable injury to

her left knee on May 2. In arriving at this decision, the Full Commission did not rely upon the opinions stated in a letter that Dr. Knight signed on July 9, 2007, because in that letter, severe swelling and spasms were noted, despite the absence of any other medical records with any such findings.

B. REASONABLE AND NECESSARY MEDICAL TREATMENT

Under Arkansas workers' compensation law, employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark Code Ann. Sec. 11-9-508(a) (Supp. 2005). Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Injured workers have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Commission Opinion filed February 17, 1989 (D612291). 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). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing

achieved; or to prevent further deterioration of the damage produced by the compensable injury. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995). A claimant does not have to support a continued need for medical treatment with objective findings. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

The record shows that the claimant experienced pain and swelling and that she was limping after the incident on May 2, and that her symptoms intensified after descending the stairs again on May 3. The claimant was seen on May 3, 2007 in the Medical Center of IZARD County by Dr. Wright. He observed mild effusion, decreased range of motion with pain, and mild crepitus. Dr. Wright's diagnosis was a left knee sprain. His plan was to use an immobilizer and Vicodin and for claimant to return to work on May 7, 2007.

The claimant returned to Dr. Wright on May 7, 2007 with increased pain. The doctor observed mild swelling. He ordered an x-ray and diagnosed left knee pain. The treatment plan was to refer her to an orthopedic doctor, to continue use of an immobilizer, to use crutches, Vicoprofen and to stay off work for one week. Dr. Wright was unsuccessful in getting a referral to an orthopedic doctor approved by the respondent

carrier. The claimant underwent an MRI on July 12, 2007 which showed a ganglion cyst in her left knee. There is a break in the records until December 2007 at which time the claimant began seeking treatment from the free medical clinic, Mountain Home Christian Clinic, where she treated until April 2008, when she was able to see Dr. Knox. The records reflected continued complaints of knee pain, observations of crepitus, as well as depression and anxiety. On April 17, 2008, a doctor at the Mountain Home Christian Clinic diagnosed a "likely tear in post horn of medial meniscus." Dr. Knox began treating the claimant on April 24, 2008, noting the presence of a Baker's cyst and continued pain. He planned a repeat MRI, which was performed on April 24, 2008. The radiologist, Dr. McAlister, noted a popliteal cyst which is normally associated with a meniscal tear.

The claimant suffered a compensable injury on May 2, 2007 which caused swelling and pain which required medical treatment. There is a clear causal relationship between the claimant's injury and her symptoms. She was symptom-free before the incident on the morning of May 2, and immediately upon the occurrence of that incident, her left knee became symptomatic. The treatment she received, including the diagnostic exams, the pain medication and the

immobilizer, were directly related to her compensable injury and warranted by her symptomatology. The Full Commission finds that the treatment received by the claimant for her knee from May 3, 2007 to date has been reasonable and necessary, and therefore the responsibility of the claimant.

The remaining issue is whether the diagnostic knee scope recommended by Dr. Knox on May 1, 2008 is reasonable and necessary treatment of her compensable injury. Dr. Knox wrote on that date:

. . . She continues to complain of pain in the knee. I have once again listened to her complaints, which include burning type pain, etc. I have kindly told her that I cannot correlate the type of soreness and pain that she has in the knee but the MRI does show evidence of a Baker's cyst of the knee. With this, almost always one would see a meniscus tear and Dr. McAlister completely agrees with this. I think this woman needs a diagnostic knee scope and may eventually require open resection of the Baker's cyst of the knee, which once again almost always is noted with meniscus pathology. . . .

Dr. McAlister reviewed the claimant's MRI of left knee and stated:

Impression: Findings as discussed above with essentially normal-appearing MRI of the knee, other than a popliteal cyst that is extending superiorly. It is rather lobulated appearing. It is on the superomedial aspect of the knee. One usually sees a meniscal tear associated with this cystic mass, although it is on the medial aspect of the knee.

The terms "popliteal cyst," "Baker's cyst," and "bursitis" used in these records all refer to the same diagnosis, "a swelling behind the knee, caused by escape of synovial fluid which has become enclosed in a sac of membrane." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 247, 421, 1337 (27th Ed. 1988).

Both Dr. McAlister and Dr. Knox used the terms "almost always" and "usually" to describe the concurrent relationship between the popliteal cyst and the presence of a meniscus tear. Further, on April 17, 2008, the doctor at the Mountain Home Christian Clinic also found presentation to be consistent with a medial meniscus tear. These statements, by three physicians are well within the reasonable degree of medical certainty required of medical opinions.

The Full Commission finds that the claimant proved by a preponderance of the evidence that there is a causal relationship among her compensable injury, the popliteal cyst and her need for the diagnostic scope of her knee. The claimant credibly testified that she experienced no problems with her knee prior to the incident on the stairs on May 2, but she developed pain and swelling on that date, which has remained intractable. Three doctors opined that her case strongly suggested the presence of a meniscus tear. The

radiologist and Dr. Knox both remarked on the relationship between the cyst and the likely tear. Bursitis can be caused by trauma or chronic overuse. Beers, M. & Berkow, R., *The Merck Manual of Diagnosis and Therapy* 479 (17th ed. 1999). Dr. Knox felt that she might require surgical removal of the cyst, but the first step in making that determination was the diagnostic knee scope.

The fact that Dr. Knox "could not correlate the type of soreness and pain she had" does not undermine the above facts showing a relationship among her injury, the cyst and the need for the diagnostic knee scope. To correlate is to draw a relationship between two or more things, and Dr. Knox's use of the word is vague in this context. However, it is clear that he took her complaints of pain, and in light of the MRI evidence of a Baker's cyst, felt that a diagnostic scope was necessary to her treatment because the cyst was a strong indicator of meniscal pathology. The claimant is entitled to the diagnostic procedure to determine what is actually wrong with her knee, where there is strong objective evidence indicating meniscal pathology and where the claimant was symptom-free prior to the compensable injury.

There is some suggestion that the claimant's complaints of pain are not consistent with her physical examination. However, the medical records also show a developing problem with anxiety and depression as the claimant's injury aged without improvement, which is relevant in evaluating her complaints. More importantly, the objective evidence in the form of the popliteal cyst shows that the claimant very likely has damage to her medial meniscus which can be determined through the diagnostic tool of the knee scope procedure. To repeat, reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury. Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995).

After a de novo review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she sustained a compensable injury on May 2, and thus she is entitled to workers' compensation benefits. The Full Commission also finds that all the medical treatment she had received was reasonable and necessary, and thus the responsibility of the respondents. However, the Full Commission also finds that the claimant proved by a preponderance of the evidence that the proposed surgery

is reasonable and necessary treatment of her compensable injury and thus is also the responsibility of the respondents.

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. Sec. 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. Sec. 11-9-715 as amended by Act 1281 of 2001. 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. Sec. 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.