

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F603327 & F312326

HAROLD E. GLENN, EMPLOYEE	CLAIMANT
CITY OF PARKIN, EMPLOYER	RESPONDENT NO. 1
CITY OF WYNNE, EMPLOYER	RESPONDENT NO. 2
MUNICIPAL LEAGUE WCT	RESPONDENT

OPINION FILED FEBRUARY 13, 2009

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

Claimant represented by the HONORABLE KRISTOFER E. RICHARDSON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE C. CHRIS BRADLEY, Attorney at Law, North 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 May 21, 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 these claims.
2. At all times pertinent, to include October 21, 2003, the employee-employer relationship existed between the claimant and respondent #2 when the claimant sustained a compensable injury to his left knee.

3. At all times pertinent, to include March 8, 2006, the employee-employer relationship existed between the claimant and respondent #1 when the claimant sustained an injury to his left knee.
4. On March 8, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$276.00/\$207.00, for temporary total/permanent partial disability.
5. The evidence preponderates that the claimant sustained specific incident injuries to his left knee on October 21, 2003, and March 8, 2006, which now require medical treatment in the form of a total knee replacement which is reasonably necessary in connection with the compensable injuries.
6. The respondents have controverted the claimant's entitlement to additional medical treatment in the form of a total left knee replacement surgery, along with corresponding temporary total disability benefits in connection with the procedure.

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 May 21, 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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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

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DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that a knee replacement was reasonable and necessary medical treatment and that the costs associated therewith should be divided equally between the City of Wynne and the City of Parkin. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof that the knee replacement was reasonable and necessary medical treatment and related to the claimant's compensable injuries.

The claimant was employed by the City of Wynne from 1999 through 2004 as a police officer. On October 21, 2003, the claimant was getting out his police car, twisted his knee and felt a snap. An MRI disclosed a

horizontal tear of the body and posterior horn of the medial meniscus; osteoarthritic change of the medial compartment manifested as regions of full thickness chondromalacia and subchondral marrow edema; acute bone contusion/microtrabecular fracture of the anterior lateral tibial plateau; and small to moderate joint effusion. Dr. Edward Cooper performed arthroscopic surgery on the claimant's knee. The claimant's preoperative diagnosis was borne out by the surgical findings.

The claimant continued to have pain. In a follow up appointment with Dr. Cooper on November 20, 2003 and December 4, 2003, the clinic notes stated that arthroscopic findings demonstrated grade IV chondral changes on the medial tibia condyle and grade III-IV chondral changes on the medial femoral condyle with osteophyte formation and the claimant would eventually need a knee replacement. The claimant was treated with steroid injections and pain medication. After this injury, the claimant testified that he could no longer run, jump or use his knee like he did prior to the injury.

The claimant continued to suffer with problems associated with his left knee. Approximately every

three to four months Dr. Cooper would inject the claimant's knee with steroids. In March of 2006, Dr. Cooper ceased injections and ceased prescribing narcotic pain medication. He recommended the claimant have a knee replacement.

The claimant left his employment with the City of Wynne and began working as a patrol officer then Assistant Chief with the City of Parkin. On March 8, 2006, the claimant was making an arrest when he sustained another injury to his left knee. The claimant stated that he immediately felt a burning pain in his left knee as well as numbness in his left leg all the way to his foot. The claimant sought treatment at the Wynne Hospital Emergency Room but got frustrated and left. He sought treatment at the hospital in Forrest City where x-rays were taken and he was given pain medication.

After an April 20, 2006, office visit with Dr. Cooper, the claimant returned for subsequent injection. On December 7, 2006, Dr. Cooper wrote:

...a steady downward spiral since injuring his L knee in 2003. At that time, he had tear of his medial meniscus which was a work related injury and exacerbation of his osteoarthritis. He has continued to

battle this with occasional steroid injections and has been able to remain gainfully employed but it has gotten to the point where he has a very difficult time performing both vocational and avocational type activities.

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I discussed options with him. What he really needs is knee replacement surgery. This is the only procedure that would reestablish him back to near his previous level of functioning. Today, we discussed the option of steroid injection. It gives him temporary relief. We also discussed his original injury. I informed him that he did have pre-existing arthritis prior to his initial injury, however, after the index injury, he has had exacerbation of his osteoarthritis to the point where he has had a steady decline in his ability to function as a law enforcement officer. There has certainly been an exacerbation of his condition related to the injury.

The claimant left the City of Parkin and now works 40 hours per week as a police officer for the City of Pangburn. He also works 30 hours per week as an officer for the City of Hickory Ridge. He has also made four trips to New Orleans to assist with the Hurricane Katrina clean up, each trip being two weeks. He is unable to work out with weights but stays in shape but

cutting his own firewood with a chain saw and wood splitter.

The claimant testified that since the last injury in March of 2006, he has been able to assist other officers or first responders in lifting or helping carry people or things down stairs. On a good day his pain level is a 2 or 3 but on a bad day it is a 9. The claimant takes over the counter medication but is requesting a knee replacement.

The medical evidence indicates that the claimant had a long standing history of left knee pain treatment prior to his 2003 injury. Clinic notes from the McCrory Family Clinic indicate that the claimant was treated for left knee pain on October 6, 1998, and the claimant was treated with an injection to his left knee. He also sought treatment for his left knee April 6, 1999, and April 17, 1999. On June 19, 1999, the claimant again sought treatment for his left knee and the records reflect a note of making an appointment with an expert (Dr. Mulhollan) along with telephone numbers. The claimant again sought left knee treatment on June 15, 2000, June 23, 2000, and November 13, 2001. On October 28, 2002, the claimant presented to the McCrory Clinic with complaints of left knee pain with edema.

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).

In my opinion, a review of the evidence demonstrates that the claimant is not entitled to a knee replacement at the respondent's expense. The claimant has a long history of left knee pain, beginning in 1998. Prior to the claimant's 2003 work-related injury with the City of Wynne, the claimant was referred to a knee specialist, Dr. Mulhollan. Although there is no evidence the claimant saw Dr. Mulhollan, the evidence does indicate that a referral was instigated. Furthermore, after the claimant's 2003 work related injury the claimant's MRI revealed grade IV chondral changes on the

medial tibia condyle and grade II-IV chondral changes on the medial femoral condyle with osteophyte formation. Dr. Cooper opined at that time that the claimant would need a knee replacement. Dr. Cooper also found osteophyte formation which is indicative of severe arthritic changes. Simply put, these changes did not occur after the claimant's work related injury in October of 2003. It is simply not possible for these changes to occur in one month's time period from injury to surgery, which the claimant underwent in November of 2003. Therefore, I find that the knee replacement surgery is not reasonable and necessary medical treatment.

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

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KAREN H. MCKINNEY, Commissioner