

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F410195

ANITA F. WALKER, EMPLOYEE	CLAIMANT
OUACHITA COUNTY MEDICAL CENTER A SELF INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED APRIL 20, 2009

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

Claimant represented by HONORABLE BILLY J. HUBBELL, Attorney at Law, Crossett, Arkansas.

Respondent represented by HONORABLE GUY A. WADE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed February 1, 2008.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The employee/employer/carrier relationship existed on or about July 6, 2004.
2. The claimant sustained a compensable injury to her left knee in the form of a torn meniscus.

3. Benefits were paid with respect to the meniscus injury.

4. The respondent paid the claimant temporary total disability compensation from September 24, 2004, through January 3, 2005, at the rate of \$135 per week.

5. The claimant last worked for the respondent at light duty on March 24, 2005.

6. The claimant's 2005 earnings from Securitas Security Services were \$765.38.

7. The claimant's 2005 earnings from Camden Living and Rehabilitation were \$95.93.

8. The claimant has failed to establish by a preponderance of the evidence that the additional surgery proposed by Dr. James Mulhollan in March and April of 2005 is reasonably necessary for treatment of her compensable knee injury.

9. The preponderance of the evidence establishes that the healing period for the claimant's compensable knee injury ended on March 22, 2005; the claimant has therefore failed to establish by a preponderance of the evidence that she is entitled to additional temporary disability compensation for her compensable injury beginning on March 25, 2005.

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

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

After a de novo review of the record, I must respectfully dissent from the majority opinion. I find that the claimant did prove that her ACL injury is compensable, that she is entitled to additional medical benefits, additional temporary total disability benefits through the end of her healing period, permanent disability benefits and attorney's fees.

Under Arkansas workers' compensation law, the employer takes the employee as she is found, and circumstances which aggravate preexisting conditions are compensable. Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990). 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). 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. A causal connection is established when the compensable injury is found to be "a factor" in the resulting need for medical treatment, even though the compensable injury is not the major cause of the disability or need for treatment. Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004). 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 claimant seeks further treatment of her compensable knee injury by Dr. Mulhollan, while the respondents assert that Dr. Mulhollan's treatment is not causally related to her compensable knee injury. The parties stipulated that the claimant suffered a compensable injury to her knee in the form of a torn meniscus on July 6, 2004. The claimant's need for Dr. Mulhollan's treatment was the compensable injury, bumping her knee, at which time she did internal damage, originally diagnosed as a sprain or contusion, and caused a pre-existing but asymptomatic degenerative condition to become symptomatic. This claim is similar to the claim in Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167(2000), in that the claimant undisputedly suffered a compensable injury and in that there is a dispute as to whether there is a causal connection between the injury and the medical treatment. As the court in Estridge explained, the claimant does not have to prove

that the injury is the major cause of the need for treatment in the case of an accidental injury. Ark. Code Ann. § 11-9-102(4)(A)(i). While the claimant does have degenerative problems, the medical records and the claimant's testimony show that the accidental injury at work, when she bumped her knee on the bedrail, either caused or precipitated the need for medical treatment, including the surgery recommended by Dr. Mulhollan. As in Estridge, "that is clear." Estridge, 343 Ark. at 282.

The medical records and the claimant's testimony show that she had no knee problems prior to the July 6, 2004 incident. The day after the incident, she began experiencing pain in her knee which did not respond to conservative treatment. Based upon the September 22, 2004 MRI, Dr. Massanelli performed a partial lateral meniscectomy on or about October 1, 2004, but the claimant continued to have pain and effusion after that date. Dr. Massanelli ordered an MRI, performed on November 29, 2004, which revealed the meniscectomy, degenerative changes, and the following:

Thinning and myxoid degenerative change
of the anterior cruciate ligament
fibers. There is MRI evidence to suggest

an acute injury or complete tear of the ACL based on this exam.

...

MRI evidence of impaction injury/infraction involving the lateral femoral condyle extending peripherally. There is also evidence of stress reaction/impaction injury involving the lateral tibial plateau. There is injury-related edema/synovitis and/or sprain surround the lateral support structures.

Moderate-to-large volume joint effusion/synovitis and popliteal cyst formation posteromedially.

Patchy marrow signal change within the distal femur, proximal tibia, and proximal fibula as described. This does spare the epiphysis. This finding is nonspecific but may represent a degree of hematopoietic marrow/reconversion.

These results show that the claimant had both degenerative and acute problems in her knee, revealed objectively. This objective evidence of injury, combined with the claimant's credible testimony that she suffered no other injury and her continued problems, support the conclusion that the claimant suffered acute injury to her knee and also that the degenerative changes which may have been pre-existing became symptomatic at the time of the bump

incident and that both her acute and chronic conditions became exacerbated over time. The record supports the conclusion that the claimant suffered a meniscal tear on July 6, that she further developed symptomatic degenerative changes as well as a partial tear to her ACL and osteonecrosis of her left tibial plateau, all in the area of her original injury. In fact, one of the first diagnoses was a contusion to the proximal tibia, which is consistent with the later diagnosis of osteonecrosis in the same place. Osteonecrosis occurs when bone loses its blood supply, causing the bone to die and eventually collapse. This causes pain and leads to arthritis. One risk factor is joint injury. MedlinePlus [Internet]. Bethesda (MD): National Library of Medicine (US); [updated 2009 February 25]. Osteonecrosis; [updated 2009 Feb 25; reviewed 2008 Sept 21]; [about 2 p.]. (Available from: <http://www.nlm.nih.gov/medlineplus/osteonecrosis.html>). There is a direct relationship between the claimant's current complaints and objective findings of injury and her original injury.

The respondents and Dr. Peeples emphasize that the

original injury was a mere bump, but this is irrelevant, because it was accepted as a compensable injury. The claimant did have damage which required repair by Dr. Massanelli, again accepted as reasonable and necessary treatment. Unfortunately, that treatment was not sufficient as it did not address all of the damage done to her knee and did not prevent the subsequent damage to her knee arising out of the original injury due to her abnormal gait and delayed treatment.

Dr. Peeples' assessment is suspect in that he does not address the diagnosis of osteonecrosis at all, despite the MRI-based diagnosis. Furthermore, his focus on the initial compensability of the injury is also irrelevant, since the parties stipulated that the July 6 incident was a compensable injury. Also, Dr. Peeples ignored Dr. Massanelli's opinion that the claimant's symptoms, not just the location of the original injury, correlated with the MRI results. Lastly, Dr. Peeples does not explain the consistency in symptoms over the life of the claimant's injury or the existence of MRI evidence of acute damage to her meniscus, her ACL, and the impaction or infraction

damage. Dr. Mulhollan spent months treating the claimant, gathering and reviewing objecting medical evidence and other expert opinions, and I find that his opinion holds much more weight than Dr. Peeples' dismissive assessment of the claimant's condition. I find that Dr. Mulhollan's treatment, including the proposed arthroscopy is reasonable and necessary treatment of the claimant's compensable injury, and the respondents are responsible for that treatment.

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 claimant does have degenerative changes which probably pre-existed the compensable injury, but her knee was asymptomatic before the injury and symptomatic after the injury. Furthermore, she had acute injury at the time of the July 6 incident accepted by the respondents, but not successfully treated. The 2004 accident aggravated the pre-existing condition and caused acute injury, and is a compensable injury. The 2004 compensable injury is a factor in the need for treatment and under Williams, supra, the claimant is entitled to the treatment

provided by Dr. Mulhollan. Not only did the 2004 incident aggravate pre-existing degenerative changes, it also caused damage to the claimant's meniscus, her tibial plateau and her ACL as demonstrated by the MRI scans. Indeed, damage to her ACL was suggested by the September 22 MRI, but dismissed at that time as probable scarring.

Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). The claimant remains in her healing period. She continues to have untreated damage in her knee causing pain which prevents her from working. Dr. Mulhollan recognized this in March 2005. Until her compensable injury is treated, the claimant has no hope of ending her healing period. The fact that she has degenerative joint disease as a component of her knee

problems does not prevent her from entitlement to indemnity benefits. She suffered acute injury and aggravation of degenerative problems which have not resolved but which actually have worsened, and she remains within her healing period.

The claimant has proven that Dr. Mulhollan's treatment and proposed treatment is reasonable and necessary medical treatment of her compensable injury. Her need for treatment was caused by the accident of July 6, 2004, in the form of acute changes in her knee and in the aggravation of previously asymptomatic degenerative changes in her knee. The claimant is entitled to temporary total disability benefits from March 25, 2007 until a date yet to be determined, because she remains within her healing period and Dr. Mulhollan has stated that she was unable to work due to her knee pain. This claim was controverted, and the claimant's attorney is entitled to fees on the indemnity benefits awarded, as well as for his work on appeal. For the aforementioned reasons, I must respectfully dissent from the majority opinion.

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PHILIP A. HOOD, Commissioner