

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F805741

CHRISTOPHER CORCORAN, EMPLOYEE	CLAIMANT
RICHARDSON WASTE, INC., EMPLOYER	RESPONDENT
GUARANTEE INSURANCE COMPANY, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 19, 2010

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

Claimant represented by the HONORABLE GREGORY R. GILES, Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE JOHN D. DAVIS, 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 December 18, 2009. 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 over this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that the additional medical treatment now recommended by Dr. Pappas in the form of left knee arthroscopy and debridement

is reasonable, necessary, and related to the claimant's admittedly compensable injury. Therefore, the costs associated with the left knee surgery now recommended by Dr. Pappas are the financial responsibility of the respondents pursuant to Commission Rule 30.

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 December 18, 2009 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.

DISSENTING OPINION

I respectfully dissent from the majority's finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment. In my opinion, the claimant has failed to meet his burden of proof.

The evidence demonstrates that the claimant sustained an admittedly compensable injury to his left knee. The claimant first sought medical treatment on April 9, 2008. Following an MRI, the claimant was referred to Dr. Norris Knight, an orthopedic surgeon. Dr. Knight ultimately performed arthroscopic surgery on the claimant's left knee on June 16, 2008. During the surgery, Dr. Knight visualized the condition of the claimant's knee including the medial meniscus. He found the meniscus intact and he also took photographs during the surgery. Dr. Knight's operative report noted degenerative changes to the medial femoral condyle and he performed a debridement of the medial femoral condyle. The claimant was released to return to regular duty on August 5, 2008.

On August 19, 2008, the claimant returned to Dr. Knight complaining of pain, swelling and a hanging sensation. Another MRI was performed and the claimant was found to have a possible complex tear of the body of the medial meniscus. The claimant sought and received a change of physician to Dr. Michael Pappas. Dr. Pappas has proposed performing surgery on the claimant's left knee and the claimant is requesting additional medical treatment. The respondents contended that the

additional medical treatment was not reasonable and necessary.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary for the treatment of the compensable injury. Norma Beatty v. Ben Pearson, Inc., Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). 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 Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D512553). Also, the respondent is only responsible for medical services which are causally related to the compensable injury.

In my opinion, a review of the evidence demonstrates that the surgery recommended by Dr. Pappas is not reasonable and necessary and is not related to the claimant's compensable injury. Dr. Pappas has diagnosed the claimant with a recurrent tear of the

medial meniscus. However, the claimant did not have a tear to begin with. Dr. Knight performed surgery on the claimant's knee in June of 2008 and he actually visualized the claimant's medial meniscus during surgery and found it to be "intact". In fact, Dr. Knight took photographs of the meniscus showing that it was indeed intact. Further, Dr. Knight confirmed in a letter dated August 8, 2009, that there was no medial meniscus tear at the time he performed the claimant's surgery.

It is apparent that Dr. Pappas did not have Dr. Knight's photographs and he noted in his November 17, 2008 he did not have a copy of the operative report. The claimant gave Dr. Pappas the inaccurate history that he underwent a medial meniscus debridement on June 16, 2008. Dr. Pappas' conclusion that the claimant was suffering a recurrent tear is based upon inaccurate information provided to him by the claimant. A medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion January 22, 1996 (Claim No. E417617). Moreover, the Commission is not bound by a doctor's opinion which is based largely on facts related to him

by the claimant where there is not sufficient independent knowledge upon which to corroborate the claimant's claim. Roberts v. Leo Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). In my opinion, it is conjecture and speculation to conclude that the recommended surgery by Dr. Pappas is reasonable and necessary medical treatment. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991); Dena Constr. Co., et al v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979); Arkansas Methodist Hosp. v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

Therefore, after I consider the fact that Dr. Knight did not observe a tear in the claimant's medial meniscus and the fact that Dr. Pappas' opinion is based upon an inaccurate history given to him by the claimant, I cannot find that the requested surgery is reasonable and necessary medical treatment.

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KAREN H. MCKINNEY, COMMISSIONER