

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F700080

DELLA GREEN, EMPLOYEE	CLAIMANT
TWIN RIVER COMMUNITY LIVING, EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INS. CO., CARRIER	RESPONDENT

OPINION FILED MARCH 12, 2010

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

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

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed October 8, 2009.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant's testimony concerning her visits with Dr. Charles Varela will be admitted and given due weight.

4. The Arkansas Workers' Compensation Act is constitutional.
5. Claimant has not proven by a preponderance of the evidence that she is entitled to hip replacement surgery at the expense of Respondents.

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.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I would award the claimant medical benefits including the recommended total hip arthroplasty, because the claimant's pre-existing hip condition was aggravated by her compensable hip fracture, accelerating her need for total hip arthroplasty.

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). 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).

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); Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167(2000).

A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated or combined with the disease to produce the disability for which compensation is sought. See Nashville Livestock Commission v. Cox, 302 Ark. 69, 787 S.W.2d 664 (1990); Minor v. Poinsett Lumber & Mfg. Co., 235 Ark. 195, 357 S.W.2d 504 (1962); Conway Convalescent Center v. Murphree, 266 Ark. 985, 588 S.W.2d 462 (Ark. App. 1979); St. Vincent Medical Center v. Brown, 53 Ark. App. 30, 917 S.W.2d 550 (1996). As is commonly stated, the employer takes the employee as he finds him. Murphree, supra. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition. However, although a disabling symptom of a pre-existing condition may be compensable if it is brought on by an accident arising out of and in the course of employment, the employee's entitlement to compensation ends when his condition is restored to the condition that

existed before the injury unless the injury contributes to the condition by accelerating or combining with the pre-existing condition. See Arkansas Power and Light Co. v. Scroggins, 230 Ark. 936, 328 S.W.2d 97 (1959).

The majority has affirmed and adopted the Administrative Law Judge's opinion, in which I note the Administrative Law Judge refused to consider the issue of aggravation, because it was not raised by the claimant at the hearing. This was an unnecessary and erroneous decision by the Administrative Law Judge and thus by the majority. The parties stipulated to compensability, so there was no need to raise the issue of whether the injury was a compensable aggravation. The question of the existence of a causal connection between the injuries of December 31, 2006 and the claimant's need for a total hip arthroplasty was central to the hearing, and whether those injuries accelerated the need for total hip arthroplasty is implicit in that question. There is no justification for refusing to consider the impact of the hip injuries of December 31, 2006 upon her pre-existing hip problems and her need for total hip arthroplasty.

The medical records and the hearing testimony support the conclusion that the claimant suffered from severe degenerative disease and avascular necrosis in her hip, for which she sought treatment as early as 2004. She had received a recommendation for total hip arthroplasty prior to her compensable accident, but the claimant elected conservative treatment, mainly in the form of the anti-inflammatory prescription medication Celebrex, which proved successful, allowing her to continue to work. In 2005, the claimant broke her left hip, requiring surgical repair, but again, she was able to return to work. In the six months prior to her compensable accident, the claimant had a bone scan, but otherwise the record is devoid of any evidence of doctors' visits or prescription medicines for the claimant's hip. She testified that she was experiencing no problems with her hip during that time and that she was able to perform all of her duties at work. She further testified that, while she was still working, her pain level was an eight to a ten on a scale of one to ten.

The testimony and medical records show that the claimant was able to function at work and at home with little difficulty with her hip, despite the presence of

degenerative joint disease and avascular necrosis. The claimant was aware that a total hip arthroplasty was likely to be necessary in the future, but at the time of her injury, it was not necessary.

Dr. Goodman, who treated the claimant in the emergency room in the Springfield, Missouri hospital on December 31, 2006, acknowledged that the claimant could need total hip arthroplasty "if and when" she continued to have pain after the acetabular fracture healed. Dr. Goodman noted on January 24, 2007, that the claimant was a candidate for the procedure if her hip pain continued. Dr. Varela released the claimant on August 21, 2007, carefully stating that the claimant's compensable injury had healed and that her pre-existing conditions were the cause of her need for a total hip arthroplasty. On July 30, 2008, the claimant saw Dr. Sites who reported that the claimant required a total hip arthroplasty, due to "right hip pain, pre-existing avascular necrosis and osteoarthritis and deteriorating function following work injury on 12-31-06." In October 2008, Dr. Sites addressed the issue of causation, reluctantly, stating that her need for total hip

arthroplasty was "more likely than not" her pre-existing avascular necrosis and osteoarthritis.

The respondents and the Administrative Law Judge rely on the above statements in support of the conclusion that there is no causal connection between the compensable injury and the need for total hip arthroplasty. This is an incomplete analysis and a disingenuous assessment. While anticipating the need for total hip arthroplasty in the future, the claimant had been able to manage her condition conservatively, functioning without medical treatment or prescription at home and in her employment in the six months prior to her compensable injury on December 31, 2006. However, upon conservative treatment of her compensable hip fracture, the claimant remained in pain, with physical limitations, for which Dr. Sites prescribed total hip arthroplasty. There is no doubt that the claimant had pre-existing conditions which her physicians expected would require surgical treatment. It is also clear, according to the evidence, that the claimant would not be facing the surgery if not for the pre-existing conditions. However, the record also shows that, if the claimant had not suffered the motor vehicle accident on December 31, 2006, she would

have been able to continue to function at work and at home. Until the compensable injury, total hip arthroplasty was a treatment option for the future, not an immediate need. Thus, the claimant's need for treatment is reasonable and necessary medical treatment of her compensable injury, as her compensable injury combined with, or accelerated, her pre-existing avascular necrosis and osteoarthritis, requiring total hip arthroplasty at a much earlier time. The hip fracture was a factor in the need for total hip arthroplasty, because until the hip fracture, the claimant was able to manage her pre-existing conditions conservatively and able to function at home and at work.

For the foregoing reasons, I must respectfully dissent from the majority opinion. I would award the claimant reasonable and necessary medical treatment including the care and treatment recommended by Dr. Sites, specifically including the total hip arthroplasty.

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PHILIP A. HOOD, Commissioner