

# NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F509551

CARLA A. KEY,  
EMPLOYEE

CLAIMANT

PULASKI COUNTY SPECIAL  
SCHOOL DISTRICT,  
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 19, 2010

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

Claimant represented by the HONORABLE GARY DAVIS,  
Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE GUY ALTON WADE,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and  
Adopted.

## OPINION AND ORDER

The claimant appeals an administrative law judge's  
opinion filed April 8, 2010. The administrative law  
judge entered 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 hereby accepted as fact.
3. The claimant has failed to prove, by a  
preponderance of the evidence, that her need  
for a weight reduction procedure, such as

lap-band surgery, is reasonably necessary medical treatment for her August 9, 2004, admitted injuries to her right and left knees.

4. The claimant has failed to prove that the requested treatment is related to her workers' compensation claim. Rather, a preponderance of the credible evidence reflects that the claimant's need for a weight reduction program, such as lap-band surgery, pre-existed the admitted injuries.
5. All additional issues, including claimant's entitlement to vocational rehabilitation assistance, permanent disability benefits, and future medical benefits are, by necessity, specifically reserved.

After reviewing the entire record *de novo*, the Full Commission opines that the administrative law judge's decision is supported by a preponderance of the evidence, correctly applies the law, and should be affirmed. Specifically, we find that the administrative law judge's findings of fact are correct and are adopted by the Full Commission.

The Full Commission distinguishes the instant case from our recent opinion in *Dorman v. City of Prairie Grove*, Workers' Compensation Commission F606345 (Oct. 5, 2010). In *Dorman*, the Full Commission affirmed and adopted an administrative law judge's decision that the claimant was entitled to a surgical intervention for the purpose of weight loss. The administrative law judge in

*Dorman* essentially found that such a surgical procedure was reasonably necessary in connection with the compensable injury. In the present matter, we are affirming an administrative law judge's finding that a lap-band surgery is not reasonably necessary in connection with the compensable injuries. We affirm the administrative law judge's finding that the instant claimant's need for a weight reduction program, such as lap-band surgery, pre-existed the claimant's compensable injuries.

Therefore, we affirm and adopt the April 8, 2010 decision of the administrative law judge, including all findings of fact and conclusions of law 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**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I would

award the claimant the reasonably necessary weight-reduction surgery.

#### HISTORY

The claimant was employed as a maintenance custodian for the Pulaski County Special School District for 17 years. She sustained an admittedly compensable right knee injury on 8/9/04, requiring total knee replacement. The claimant also experienced an admitted compensable consequence injury to the left knee, likewise requiring a total knee replacement. Due to inactivity associated with the condition of her knees, claimant testified that she has been unable to lose weight and has, in fact, gained weight since her initial injury.

The claimant's treating physician, Dr. Scott Bowen, testified that the claimant could definitely not return to work as a custodian without significant weight loss, and would have difficulty returning to any type of work without significant weight loss.

Though the claimant was overweight prior to the August 9, 2004 right knee injury and subsequent compensable consequence to the left knee, she was extremely active. She was on her feet six to eight hours a day, moving equipment and going up and down

stairs, squatting, kneeling, and lunging. Between February 10, 2003, when she saw Dr. John L. Wilson for a back strain, and January 20, 2005, when she was seen by Dr. Stephen Hudson for the instant injury, claimant had lost 58 pounds. Her weight at that time was 200 pounds. At the time of the hearing, claimant weighed 304 pounds, an increase of 104 pounds. Dr. Bowen testified that injury-associated inactivity was the cause for the weight gain.

#### DISCUSSION

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that 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. Ark. Code Ann. § 11-9-705(a) (3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App.

100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). The Court of Appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's compensable injury. See Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Surgical intervention for purposes of weight loss has been found reasonably necessary medical treatment. See, Perry v. Leisure Lodges, Inc., 19 Ark. App. 143, 718 S.W.2d 114 (1986). Here, inactivity associated with the work injury is the cause of the claimant's 104-pound weight gain. Her compensable injuries, two knee replacement surgeries, and the use of a cane, are also the cause of her inability to lose weight. Dr. Bowen has corroborated the claimant's testimony. He has recommended weight-reduction surgery. His opinion is unchallenged. As such, I find the claimant is entitled to the recommended weight-reduction surgery.

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For the aforementioned reasons I must  
respectfully dissent.

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PHILIP A. HOOD, Commissioner