

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F512664

MARIA ROJAS, EMPLOYEE	CLAIMANT
WAL-MART STORES, INC., EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT INC., CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 7, 2010

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

Claimant represented by the HONORABLE EVELYN BROOKS,
Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE TOD BASSETT,
Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the
Administrative Law Judge filed January 11, 2010.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on October 7, 2009, and contained in a pre-hearing order filed October 8, 2009 are hereby accepted as fact.
2. The claimant has failed to meet her burden of proving by a preponderance of the evidence

that she is entitled to additional medical treatment for her compensable knee injury.

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 my de novo review of the entire record, I must respectfully dissent from the majority opinion. I find that claimant proved by a preponderance of the evidence that she is entitled to additional medical treatment of her compensable right knee injury. I would award additional medical benefits, including the EMG diagnostic testing recommended by Dr. Alost.

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). Treatment intended to reduce, or enable a claimant to cope with, chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. Sec. 11-9-508. Billy Chronister v. Lavaca Vault, Full Commission Opinion filed June 20, 1991 (D704562). Postsurgical improvement is a proper consideration in determining whether surgery was reasonable and necessary. Hill v. Baptist Medical Center, 74 Ark. App. 250, 48 S.W.3d 544 (2001), citing Winslow v. D & B Mechanical Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

The claimant sustained an admittedly compensable injury in 2005. The claimant had a break in treatment for

almost two years after she was released to return to work, limited duty, after her knee surgery. During that time, she continued to have symptoms, but she was unable to get treatment through Wal-Mart and unable to afford treatment on her own. When she was able to get medical treatment for her knee pain, her symptoms were consistent with the problems she had experienced since her fall in November 2005. She also had back pain which complicated her treatment, in medical and legal terms. Dr. Tomlinson stated that the claimant's symptoms were not related to the 2005 fall when she fractured her patella, but that the symptoms were "probably due to patellofemoral tilting and weakness in the right thigh, which may be exacerbated by her back injury." The majority relied on this statement to deny benefits.

The claimant did not have knee problems prior to her 2005 fall. She fractured her patella at that time, and eventually surgery was performed, which provided some - but not complete - improvement. The medical records reflect that the claimant had unequal muscle tone in her thighs, right less than left, which corresponds with Dr. Tomlinson's suggestion that the claimant had weakness in her right thigh. However, Dr. Tomlinson's conclusion that the knee

injury did not have a causal connection to her current symptoms is not logical. The patellofemoral tilting and weakness in the right thigh would not exist but for the 2005 fall and the resulting compensable injury to the claimant's right knee. Thus, there is a causal connection between the current symptoms and the compensable injury, and Dr. Tomlinson's opinion is not a sufficient basis upon which to deny additional medical treatment.

The claimant never recovered from her original injury, and the one time she was released to full duty, she immediately developed knee pain and weakness while performing her duties driving a eighteen-wheeled tractor-trailer rig. The claimant was under work restrictions during the gap in her treatment, which was caused by a delay in approval by Wal-Mart for continued treatment. To repeat, Wal-Mart did not approve requested treatment despite the fact that the claimant was under restricted duty with continued pain and limitations. The claimant's complaints are consistent throughout the records of her treatment of her right knee injury.

The claimant had low back pain, which was found not to be a compensable injury as a result of her November

2005 fall. Dr. McAlister opined that her back problems would, if symptomatic, be likely to result in left-sided radicular pain. This opinion supports the conclusion that the claimant's right knee pain and weakness are a result of the right knee injury and not her lumbar spine problems.

I find that Dr. Alost's treatment, including his planned EMG of her right leg, is reasonable and necessary treatment of the claimant's compensable injury. The claimant has current findings of problems in her knee, including tendinosis, bursitis, synovitis, and chondromalacia as well as her patellar fracture. She has not healed, and there is further diagnostic and therapeutic treatment to be performed to improve her condition.

After my de novo review of the entire record, I must respectfully dissent from the majority opinion. I find that the claimant proved by a preponderance of the evidence that she is entitled to additional medical treatment of her compensable right knee injury. I would award additional medical benefits, including the EMG diagnostic testing recommended by Dr. Alost.

For the foregoing reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner