NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F812066

WILLIAM STENGEL, EMPLOYEE	CLAIMANT
LOWE'S HOME CENTERS, INC., EMPLOYER	RESPONDENT
SPECIALTY RISK SERVICES, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 7, 2010

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

Claimant represented by the HONORABLE JAMES LUCAS GRAHAM, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by the HONORABLE RANDY MURPHY, 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 February 10, 2010. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. There was a November 22, 2008, compensable left knee injury.

2. The compensation rates are $183/154.

3. The claimant has proven by a preponderance of the evidence that the additional medical, specifically the knee replacement, is reasonable and necessary and remains the responsibility of respondents.

4. The claimant has proven by a preponderance of the evidence that he remained in his healing period and had not returned to work from January 14, 2009 through April 3, 2009 and is entitled to temporary total disability benefits.

5. The claimant has proven by a preponderance of the evidence that he remains in his healing period and is entitled to temporary partial disability benefits from April 4, 2009, to a date to be determined.

6. The claimant’s attorney is entitled to the maximum statutory attorney’s fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers’ Compensation Rules ad Regulations, Rule 10.

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 February 10, 2010, 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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's findings that the claimant proved by a preponderance of the evidence that the total knee replacement on the claimant's left knee was reasonable and necessary medical treatment. After conducting a de novo review of the record, I find that the claimant has failed to meet his burden of proof. Accordingly, I would reverse the decision of the Administrative Law Judge.

The claimant sustained an admittedly compensable injury to his left knee on November 22, 2008. The respondents accepted the claim and paid benefits through January 13, 2009. At that time, the claimant decided to undergo a total knee replacement. The respondent's controverted that medical treatment and ceased paying temporary total disability benefits. The Administrative Law Judge found the knee replacement was reasonable and necessary medical treatment and awarded temporary total disability benefits from January 13, 2009, through a date yet to be determined.

In my opinion, the claimant's total knee replacement was not reasonable and necessary medical treatment. The medical evidence demonstrates that the claimant suffered from long standing left knee problems.

The claimant had previously undergone arthroscopic procedures. Dr. Rudder, the surgeon who performed the knee replacement, indicated that any other treatment would be futile. The preoperative and postoperative diagnosis is degenerative arthritis of the left knee. The surgical report contains no other findings. Moreover, a peer review by Dr. Silver and Dr. Peeples both state that more conservative treatment options may very well have resolved the claimant's complaints without surgical intervention.

The Administrative Law Judge relied on the case of Williams v. L&W Janitorial, Inc., 85 Ark. App. 1, 145 S.W.3d 383 (2004). However, I find the reliance on Williams is misplaced. In this case, unlike in Williams, there is conflicting medical evidence.

Therefore, after considering the reports of both Dr. Silver and Dr. Peeples and the post-surgical findings of Dr. Rudder, I cannot find that the total knee replacement was reasonable and necessary medical treatment.

Accordingly, for all the reasons set forth herein, I must dissent from the majority's award of benefits.

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KAREN H. McKINNEY, Commissioner