

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F902938

DONNA BALCH,
EMPLOYEE

CLAIMANT

SEBASTIAN COUNTY,
SELF-INSURED EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT,
TPA

RESPONDENT

OPINION FILED JUNE 17, 2011

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

Claimant represented by the HONORABLE EDDIE WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE J. LESLIE
EVITTS, III., Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed February 17, 2011. 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 of this claim.
2. On March 19, 2009, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On March 19, 2009, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$360.00 for total

disability and \$270.00 for permanent partial disability.

4. On March 19, 2009, the claimant sustained compensable injuries to her right knee and low back.
5. There is no dispute over medical expenses incurred through May 10, 2010.
6. The claimant has failed to prove by the greater weight of the credible evidence that the medical services she received for right knee difficulties, by and at the direction of Dr. James Long, on and after May 10, 2010, represent reasonably necessary medical services for her compensable right knee injury. Specifically, the claimant has failed to prove by the greater weight of the credible evidence that these medical services were likely necessitated by or connected with her compensable right knee injury of March 19, 2009.
7. There is no dispute over the temporary total disability benefits through May 9, 2010.
8. The claimant has failed to prove by the greater weight of the credible evidence that she is entitled to additional temporary total disability benefits for the period of May 10, 2010 through a date yet to be determined. Specifically, the claimant has failed to prove by the greater weight of the credible evidence that during this time she continued within the healing period from the effects of either of her compensable injuries and has failed to prove that she had not returned to work or was rendered totally disabled from doing so, as a result of these compensable injuries.
9. The claimant would not be entitled to any additional benefits provided by Ark. Code Ann. §11-9-505(a) for the period of July 12, 2010 through a date yet to be determined. Specifically, the greater weight of the credible evidence fails to establish that the

claimant was receiving or was entitled to receive any compensation or indemnity benefits for her compensable injuries during this period.

10. The respondents have controverted the claimant's entitlement to payment of the expenses incurred for the medical expenses rendered her for her right knee difficulties by and at the direction of Dr. James Long, on and after May 10, 2010, the claimant's entitlement to additional temporary total disability benefits for the period of May 10, 2010 through a date yet to be determined, and the claimant's entitlement to benefits under Ark. Code Ann. §11-9-505(a).

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.

Therefore we affirm and adopt the February 17, 2011 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

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the May 10, 2010 surgery performed by Dr. James Long was causally related to her compensable knee injury. As such, I find that the respondents are liable for the May 10, 2010 surgery and all workers' compensation benefits associated with this surgery.

The Administrative Law Judge, affirmed and adopted by the majority, denied this claim based on a conclusion that the Dr. Long did not specifically opine that there is a causal relationship between the March 19, 2009 compensable injury and the surgery that he performed on May 10, 2010. In regard to Dr. Long's opinion relative to any causal relationship between his recommended treatment and the March 19, 2009 accident, it is not required for a physician to use any magical

language specifically indicating that his opinion is stated within a reasonable degree of medical certainty.

In this instance, Dr. Long saw the claimant as the result of the Workers' Compensation Commission granting a Change of Physician request. On July 2, 2009, Dr. Long reports that the initial office visit was because the claimant was complaining of pain in her right knee and that, on March 19, 2009, she was kicked on the lateral aspect of her right knee by an arrested subject. It is clear from Dr. Long's records that he knew of the surgery that had been performed by Dr. Frank Griffin following that accident, and he knew that the claimant continued to have pain, although she returned to work. There is no other history of recent trauma to the knee contained in Dr. Long's records. Therefore, any reference to a post-traumatic condition can only reasonably refer to either the March 19, 2009 accident or the surgery that was performed by Dr. Griffin on April 18, 2009 in order to improve the symptoms that resulted from the March 19, 2009 accident.

Dr. Long's diagnosis was post-traumatic arthralgia of the right knee with history of tears of the lateral meniscus. Thus, a plain reading of Dr. Long's records indicate that his opinion was that he was

treating post-traumatic problems in the claimant's right knee in connection with the March 19, 2009 accident.

After performing the second surgery on May 10, 2010, Dr. Long wrote a progress note on May 11, 2010, indicating that the claimant's condition was consistent with her mechanism of injury, which was being kicked by a prisoner. Finally, on August 4, 2010, Dr. Long indicates that the claimant should not return to a setting where her knee joint might be traumatized, which was the mechanism of her original injury.

In regard to Dr. Terry Sites opining that the effects of any aggravation to the claimant's pre-existing condition would have ended in 2009, such a statement is pure speculation, in view of the fact that Dr. Sites never examined the claimant in 2009 and the evidence in this case unequivocally shows that the claimant continued to be symptomatic in spite of the treatment that Dr. Sites claims would have abated the effects of the aggravation of her pre-existing condition.

Specifically, Dr. Frankie Griffin's records on May 7, 2009 indicate that the claimant was walking with a limp. This notation was three weeks after Dr. Griffin had performed surgery on the claimant's knee. There is

no indication that the claimant was limping before the admittedly compensable injury.

On July 2, 2009, after the Workers' Compensation Commission granted the Change of Physician request, the claimant presented to Dr. Long, still symptomatic. On July 10, 2009, the claimant was examined by a physical therapist and was noted to have a slight antalgic gait pattern. She gave a history of her knee popping. She had decreased range of motion and strength in the right knee.

On July 20, 2009, Dr. Long indicated that, after an injection, the claimant had at least 50% improvement in the status of her knee following the injection plus therapy. Clearly, 50% improvement does not indicate that the claimant's knee was asymptomatic as of July 20, 2009.

On August 11, 2009, Dr. Long noted further improvement in the claimant's condition; however, the note indicates that she had about two-thirds improvement over when she was initially seen by Dr. Long. Two-thirds improvement, of course, does not mean that the claimant was asymptomatic and, therefore, completely recovered from the effects of her job-related injury. At that point, she had two steroid and local anesthetic

injections, but she was still symptomatic. Further treatment was still being recommended.

The claimant was seen again on August 25, 2009, and she was still symptomatic.

There is simply no indication in the medical records that the claimant's symptoms ever completely abated in 2009. In fact, the claimant testified that she continued to have problems, although she was working, and that she started trying to get back in to see Dr. Long in November of 2009. She finally got back in to see him on January 4, 2010. At that time, she was complaining of essentially the same problems.

In a January 4, 2010 progress note, Dr. Long indicates that the claimant is followed for post-traumatic arthralgia of her right knee. It is clear from the contents of the progress note that Dr. Long considered himself to still be treating the claimant for the same condition for which she was initially seen. He specifically mentions the fact that the claimant had a traumatic injury to her right knee.

The claimant's knee was so symptomatic that Dr. Long recommended another Hyalgan injection in the right knee. He commented that the claimant had a good response to a series of those injections done several

months ago. He specifically indicated that the knee was still symptomatic.

In view of the medical evidence and the claimant's testimony, the overwhelming weight of the evidence indicates that her knee symptoms did not completely abate during 2009 as Dr. Sites opined they would. In fact, Dr. Sites' own records indicate that a repeat arthroscopy would be appropriate where a patient continues to be symptomatic following a surgical procedure.

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. Heritage Baptist Temple v. Robison, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is itself compensable. Oliver v. Guardsmark, 68 Ark. App. 24, 3 S.W.3d 336 (1999). Here, an adult male kicked a female officer in the back of her knee so hard that it not only caused pain in her knee, but also pain in her lumbar spine, as a result of the traumatic nature of the blow. The medical records show that the claimant had an asymptomatic condition in her knee known as chondromalacia. There is no evidence in

the record that she was in need of any kind of treatment for her knee at the time of the accident, and the record shows that Dr. Griffin actually shaved the patella as part of the surgery that he performed in connection with the March 19, 2009 injury.

The trauma to the knee regarding the March 19, 2009 accident, together with the trauma to the knee that resulted in connection with the surgery that was performed, aggravated the pre-existing condition. That aggravation caused the claimant to continue to be symptomatic and she ultimately underwent surgery by Dr. Long in order to attempt to improve those symptoms. The May 10, 2010 surgery is causally connected to the March 19, 2009 kicking incident.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner