

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G004960

ELIZABETH LACINA, EMPLOYEE	CLAIMANT
NORTH HEIGHTS ELEMENTARY SCHOOL, EMPLOYER	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION, INSURANCE CARRIER	RESPONDENT

OPINION FILED JUNE 20, 2011

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

Claimant represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Respondents represented by the HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed, in Part, and Reversed, in Part.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed February 8, 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. The employer/employee/carrier relationship existed on or about October 20, 2009, when the claimant contends she sustained a compensable injury.

3. The claimant's earnings were sufficient to entitle her to compensation rates of \$318.00 for temporary total disability benefits and \$239.00 for permanent partial disability benefits.
4. The claimant missed work due to her surgery from March 24, 2010, to April 22, 2010.
5. The claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her left knee and leg on October 20, 2009.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.
7. The claimant has failed to prove by a preponderance of the evidence that the treatment by Dr. Ballard and Dr. Weber was authorized treatment.
8. The claimant has failed to prove by a preponderance of the evidence that the treatment by Dr. Ballard and Dr. Weber was reasonable and necessary medical treatment and causally related to the work-related injury.
9. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits.

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, with the exceptions of Finding No. 6 regarding additional medical

treatment, Finding No. 8 regarding reasonably necessary medical treatment causally related to the work related injury, and Finding No. 9 regarding temporary total disability benefits. After a de novo review of the record, we find that the treatment rendered by Dr. Ballard and Dr. Weber, although unauthorized and not a liability of the respondent, was reasonably necessary and causally related to claimant's work related injury. As the Administrative Law Judge did not consider the issue of additional reasonably necessary medical treatment independently of Finding No. 8, we find that the claimant may very well be entitled to additional reasonably necessary medical treatment, although it would have to be at the direction of the respondent or through the Commission-authorized Change of Physician process. We also find that the claimant has a scheduled injury and remained in her healing period, entitling her to temporary total disability benefits, from March 24, 2010, to April 22, 2010. Therefore, we reverse Finding No. 6, Finding No. 8 and Finding No. 9.

HISTORY

_____The claimant initially injured her left knee before October of 2009 by falling on the playground. She was treated by Dr. Adametz and Dr. Ballard. She was not referred to an orthopedic surgeon or to have an MRI

at that time. She testified that her left knee was fine in October of 2009. On October 20, 2009, the claimant was stepping over a barrier on the playground when she fell down on her knee. She felt immediate pain in the front part of her knee. She explained that, after the fall, her knee began swelling and hurting bad. She went to the office and reported the injury. She was sent to Dr. Marcia Hixson, who gave her a Spandex knee brace with rods in the sides. She wore the brace from Dr. Hixson for at least six weeks. Dr. Hixson recommended physical therapy, but the claimant did not attend. She continued to have swelling in her knee after the October 20, 2009 incident and went to see Dr. Devon Ballard, without the respondent's knowledge or permission, or a Commission-authorized change of physician, in February of 2010. She was referred to Dr. Michael Weber in March of 2010, and ultimately underwent knee surgery as a result of the injuries she suffered in her fall of October of 2009.

Reasonably Necessary Medical Treatment

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).

Here, it is clear that the claimant's surgical procedure was reasonable, necessary, and causally related to her October 2009 injury. Contrary to the Administrative Law Judge, we do not find that the treatment was for arthritis and degenerative conditions. In February of 2010, the claimant visited Dr. Bradley Pierce for left knee pain. Dr. Pierce's note states

that the claimant reported a fall in October as a possible cause of her pain. It was also noted that there was obvious debris or loose bodies in the knee. In March of 2010 the claimant was seen by Dr. Weber. Dr. Weber notes that the claimant fell on the playground and thinks that the fall may have precipitated her current pain. Dr. Weber also stated that his findings were unusual without an injury. He notes that there could be loose bodies in the knee. After the surgery, on March 24, 2010, Dr. Weber confirmed that there were loose bodies in the knee, and that they were removed.

The fact that the treatment was rendered by unauthorized physicians and is not a liability of the respondent does not take away from the fact that it was reasonably necessary and causally related to the claimant's compensable injury.

Additional Medical Treatment

As the Full Commission finds that the unauthorized treatment received by the claimant was reasonably necessary and causally related to the compensable injury and not due to arthritis and degenerative conditions, as found by the Administrative Law Judge, the Full Commission must reverse Finding No. 6. The claimant may very well be entitled to additional reasonably necessary medical treatment, although it

would have to be at the direction of the respondent or through the Commission-authorized Change of Physician process.

Temporary Total Disability

_____A claimant is not precluded from receiving temporary total disability benefits solely because she was denied medical expenses from an unauthorized physician. In fact, the reports of an unauthorized doctor should be considered in determining the extent of disability of the claimant. Markham v. K-Mart Corp., 4 Ark. App. 310, 312, 630 S.W.2d 550 (Ark. Ct. App. 1982).

In order to be entitled to temporary total disability compensation for a scheduled injury, the employee must prove: (1) that she remains within her healing period; and (2) that she has not returned to work. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Here, the medical reports indicate that the claimant had surgery on March 24, 2010. She returned to work on April 23, 2010. The claimant was still actively treating with Dr. Weber and was still in her healing period when she returned to work. As such, she is entitled to temporary total disability benefits from March 24, 2010 until April 22, 2010.

We therefore affirm, in part, and reverse, in part, the February 8, 2011, decision of the Administrative Law Judge.

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 concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I respectfully concur in part and dissent in part from the majority's opinion. Specifically, I concur in the majority's finding that the treatment the claimant received from her family doctor, Dr. Ballard, and referrals therefrom were unauthorized medical treatment and not the responsibility of the respondent. I must respectfully dissent from the majority's finding that the claimant was entitled to temporary total disability benefits.

In my opinion, the claimant cannot prove by a preponderance of the evidence that any treatment she received from Dr. Ballard and Dr. Webber was reasonable and necessary medical treatment. The evidence demonstrates that the claimant has long-standing complaints of pain and symptoms in her left knee. Maribell Siems testified that the claimant had told her on several different occasions, prior to the alleged injury in October, that she had pain and swelling in her knee. Ms. Siems stated that the claimant had worn a knee brace on her left knee in the past. Ms. Paige Wright also testified that the claimant had intermittently mentioned left knee symptoms prior to the October 20,

2009 incident. Further, Jodi Ederington had provided the testimony that the claimant had even referred to her problems as "arthritis" when discussing her knee problems after the fall on October 20, 2009. Moreover, the principal, Dana Snowden made clear that the claimant did not, at any time, indicate that the surgical procedure she underwent in March of 2010 had any relationship whatsoever to do with the October 20, 2009 fall.

The medical records indicate that in October of 2008, the claimant had sought treatment for significant left knee pain with swelling and popping with Dr. Ballard. At that time, Dr. Ballard opined that the claimant had a possible cartilage tear and discussed the need for an MRI if her condition did not improve. The claimant complained the same complaints on February 23, 2009 and, again, the doctor recommended an MRI.

The evidence is clear that the claimant had pre-existing problems with her left knee prior to her incident on October 20, 2009. The claimant did not seek treatment through the respondent employer at any time after she initially received her treatment from Dr. Hickson, who released her to full duty in November of 2009. The respondents paid for her treatment through November of 2009. Any treatment after that was not

reasonable and necessary and is related to the claimant's long-standing arthritic problems with her left knee.

Therefore, after considering the evidence of record, I cannot find that the claimant is entitled to any medical treatment or any temporary total disability benefits as she was released to full duty in November of 2009. Accordingly, I must respectfully dissent from the majority's award of benefits.

KAREN H. MCKINNEY, Commissioner