

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G000989

JEANNE TUBBS, EMPLOYEE	CLAIMANT
L. A. DARLING, EMPLOYER	RESPONDENT
MANAGEMENT CLAIM SOLUTIONS, INC., INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 27, 2011

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

Claimant represented by the HONORABLE KRISTOFER RICHARDSON,
Attorney at Law, Jonesboro, Arkansas and HONORABLE KIMBERLY
DALE, Attorney at Law, Paragould, Arkansas.

Respondent represented by the HONORABLE GAIL O. MATTHEWS,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

The respondents appeal and the claimant cross-appeals
an administrative law judge's opinion filed November 16,
2010. The administrative law judge found that a left total
knee replacement was reasonably necessary in connection with
the claimant's compensable injury. The administrative law
judge found that the claimant was entitled to temporary
total disability benefits from September 15, 2008 through

June 15, 2009. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved she was entitled to a left total knee replacement. We find that the claimant proved she was entitled to temporary total disability benefits from September 15, 2008 through November 18, 2008.

I. HISTORY

Jeanne L. Tubbs, now age 65, testified that she began working for L.A. Darling in August 1990. Ms. Tubbs testified that she injured her right ankle in a nonwork-related motor vehicle accident in about 2003. The parties stipulated that the claimant sustained a compensable left knee injury on February 18, 2008. The claimant testified that she twisted her knee while attempting to move a tilt lift. The claimant testified that she felt "a burning pain in the inside of the left knee." An MRI of the claimant's left knee was done on March 12, 2008, with the following impression: "1. Small joint effusion. 2. Abnormal increased T2 signal intensity within the anterior posterior horn of the medial meniscus with possible meniscal tear

posterior horn of medial meniscus. 3. Mild chondromalacia of the medial joint space."

Dr. Ron D. Schechter began treating the claimant on April 1, 2008: "She works at L.A. Darling. She reports she was previously well without any prior left knee problems. Then, on February 18, 2008 she was moving a tilt left (sic) and somehow caught her left knee during the movement with a twisting type injury to the left knee. She had immediate pain....Her history, exam, an MRI scan are all consistent with a grade one MCL strain." Dr. Schechter's diagnosis included "Sprain, Knee, Medial Colatr Lgmt."

Dr. Schechter performed left knee surgery on May 19, 2008: "Left knee diagnostic arthroscopy. Left knee synovectomy. Left knee patella, femoral and medial compartment chondroplasties. Left knee arthroscopic partial medial meniscectomy." The post-operative diagnosis was "Left knee medial meniscus tear. Left knee osteoarthritis with synovitis."

The claimant testified that she returned to light-duty work three days after undergoing surgery by Dr. Schechter. The claimant followed up with Dr. Schechter on May 29, 2008:

She seems to be doing very well and has already had drastic pain relief compared to her

preoperative status. I reviewed the intraoperative findings with her and her husband again. I explained how she did have some synovitis and a meniscal tear which could correlate with her work related injury, but she was also found to have significant osteoarthritis with exposed bone of the medial femoral condyle. I would say that I think it would be reasonable to allow her about six to eight weeks to recover from her work related injury. If she has additional problems from that time on, I believe the residual problems would be more likely secondary to her underlying arthritis and not her work related injury. For now, she's doing well enough that we're going to let her progressive (sic) activities as tolerated and follow-up as needed. I'm going to give her another two weeks of light duty just to regain her residual motion and strength before returning to hard standing work. She will call if she has significant enough persistent symptoms after about another six to eight weeks that she wants to consider further care. At that point, we will offer her the option of trying another steroid injection or trying the synvisc series.

However, [I] was honest with her that any additional care after the six to eight marked would likely need to be handled under her private insurance and not her work related insurance. She voiced understanding. I would also say that she should have no permanent impairment from the work-related portion of her injury as any additional symptoms she has after six to eight weeks or (sic) likely related to her arthritic problem...

The patient is expected to have some discomfort, but may return to her regular work duties with no formal restrictions except no standing more than 2 hours per day for 2 weeks. After 2 weeks, may resume normal activities with no restrictions.

The claimant followed up with Dr. Schechter on July 17,

2008:

She seems to have plateaued with her surgical improvement. She did have some relief with surgery, but has residual pain. As we have discussed on prior occasions, I really believe her residual pain is related more so to her underlying arthritis than her work injury. Our next treatment option would be to try another steroid injection. She might get better relief from this now than she did before since her knee has been debrided. If she got adequate enough relief from this, these injections could be repeated at every three months. If she did not get adequate enough relief, our next option would be a synvisc series. Ultimately, if she has continued symptoms our next option would be knee replacement. I reviewed this with her and she wants to proceed with a steroid injection.

However, we are going to have to defer treatment until Work Comp clarifies whether or not they are going to continue to handle this as a Work Comp claim or if the patient needs to file this with her private insurance. Once this is sorted out, we will bring the patient in for a knee steroid injection.

The claimant testified that her symptoms worsened following Dr. Schechter's treatment and that she began having difficulty walking. The claimant began treating with Dr. Patrick J. LeCorps on August 26, 2008: "The patient is a 63-year-old female, who is seen because of right ankle and left knee pain....The left knee has severe osteoarthritis of the medial knee joint and is in need of a knee replacement. The patient was told about her diagnosis and about the treatment needed, and she will let us know when she will go

ahead and have it done. A left knee replacement has been recommended to be done."

Dr. LeCorps reported on about September 12, 2008:

The patient is a 62-year-old female, 5 feet 7, 225 pounds, admitted electively with a diagnosis of severe osteoarthritis of the left knee, to undergo left total knee replacement. She has had a fracture dislocation of the right ankle that was treated by Dr. Brett about 6 years ago. She had posttraumatic arthritis of the ankle with knee effusion. She had broken hardware and posttraumatic arthritis that is painful swelling on weight-bearing, limitation of motion. The left knee itself had severe osteoarthritis on the medial knee joint, needs knee replacement. It seems the joint space is gone with narrowing bone spur formation. I do not think that anything could be done other than knee replacement because of the end stage type of arthritis that the patient has to that knee. She knows that this will take care of the pain to that knee, but the right ankle problem will have to be addressed at a later date....

ASSESSMENT:

Right ankle posttraumatic arthritis, status post open reduction and internal fixation bad fracture, from which she developed posttraumatic arthritis. She has osteoarthritis of the left knee involving mainly the medial knee joint, narrowing of the joint, no swelling, decreased range of motion, X-ray showed extensive arthritis to that knee with end stage type of bone-to-bone apposition.

Patient was told about the complications of knee replacement, including stiffness, possibility of stiffness and possibility of infection that may lead to amputation, many trips to the OR to try to correct that if that happens, including failure of the prosthesis, possibility of neurovascular

deficit, deep venous thrombosis, pulmonary embolism and death....

Dr. LeCorps's diagnoses were "1. Severe osteoarthritis of the left knee. 2. Posttraumatic arthritis of right ankle." The claimant's testimony indicated that she continued to work for the respondent-employer until September 15, 2008. Dr. LeCorps performed a Left total knee replacement on September 15, 2008. The pre- and post-operative diagnosis was "Severe osteoarthritis of the left knee."

Dr. LeCorps noted on October 7, 2008, "The patient is status post total knee replacement on the left side....She is ambulating well. Good range of motion of the knee and practically no pain...." Dr. LeCorps noted on October 21, 2008, "The patient is about 4 - ½ weeks status post total knee replacement on the left. Her range of motion is 0 to almost 100-degrees. She is ambulating with mild to no limp. There is some heat on palpation of the knee area which is expected at this stage of healing. She will continue exercises. Return in four weeks for follow-up."

Dr. LeCorps noted on November 18, 2008, "She is doing well with her knee replacement which was done about two months ago. Her problem is her right ankle that she had a

fracture six years ago. She developed posttraumatic arthritis. We are going to remove the plate and screws and do a fusion of the right ankle. She also has a bone spur at the level of the right heel that will be removed at the same time."

Dr. LeCorps performed right ankle surgery on November 21, 2008: "1. Removal of hardware from R ankle. 2. Right ankle fusion using cannulated screws and autogenous bone graft from the right iliac crest donor site. 3. Right plantar fasciotomy." The post-operative diagnosis was "1. Posttraumatic arthritis, right ankle, status post ORIF. 2. Right foot plantar fasciitis with right heel spur."

The claimant followed up with Dr. LeCorps on November 25, 2008: "The patient is here today. Her knee is doing better. She has better range of motion. Her problem is below the prosthesis that she has in the hip. She has thinning of the cortex of the femur due to low calcium level in her blood, so I gave her Os-Cal to take 500 mg t.i.d. for the next 30 days, and then she will return for follow-up."

Dr. LeCorps noted on December 9, 2008, "The patient is status post ankle fusion on the right. The wound is fully healed....The left total knee is doing well." The claimant

continued following up with Dr. LeCorps for the claimant's right ankle surgery.

The claimant agreed on cross-examination that she retired on June 12, 2009.

A pre-hearing order was filed on April 5, 2010. The claimant contended, among other things, that she was entitled to additional medical treatment including a total knee replacement. The claimant contended that she was entitled to temporary total disability benefits.

The respondents contended, among other things, that the claimant "went on FEMA leave" beginning September 11, 2008. The respondents contended that the claimant "went on long-term disability" beginning March 14, 2009 and that the claimant retired on June 12, 2009.

A hearing was scheduled on the issues of "compensability (medical and temporary total disability benefits subsequent to September 11, 2008) and controverted attorney fees."

On June 26, 2010, Dr. Schechter answered a questionnaire and checked "No" to the question, "Do you believe Ms. Tubbs' work related injury on February 22, 2008 caused her need for a knee replacement?" Dr. Schechter

wrote, "Her work injury exacerbated her condition, but she had arthritic changes that appeared to be pre-existing. The pre-existing arthritic changes are more likely the major reason she has enough pain to warrant knee replacement." However, Dr. Schechter checked "Yes" as an answer to the following question: "Based on the history you have taken from Ms. Tubbs, together with your clinical findings, do you believe that Ms. Tubbs work related injury on February 22, 2008 accelerated her need for a total knee replacement?" Dr. Schechter wrote, "I see many patients with pre-existing arthritis that seem to tolerate their symptoms and then have an injury that exacerbated the arthritis and their symptoms. I believe this to be the case with Ms. Tubbs."

Dr. LeCorps answered a similar questionnaire on July 19, 2010 and wrote, "Ms. Tubbs suffered from arthritis of the left knee prior to her work related injury on February 22, 2008. However, the injury accelerated that arthritic process and caused a torn meniscus for which she had surgery and the partial meniscectomy she had further contributed to more arthritis to the knee and the need to have the joint replaced....Arthritis is a slow going process. Once trauma happens to an arthritic joint, it seems to accelerate the

disease to the point that sometimes further surgery will be required.”

A hearing was held on August 20, 2010. The claimant testified that she had not worked in any capacity since undergoing surgery by Dr. LeCorps. The claimant contended that she was entitled to temporary total disability benefits beginning September 15, 2008 to a date to be determined.

An administrative law judge filed an opinion on November 16, 2010. The administrative law judge found, among other things, that the claimant proved she was entitled to knee replacement surgery provided by Dr. LeCorps. The administrative law judge found that the claimant proved she was entitled to temporary total disability benefits from September 15, 2008 through June 15, 2009. The respondents appeal to the Full Commission and the claimant cross-appeals.

II. ADJUDICATION

A. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The

claimant must prove by a preponderance of the evidence that she is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 845 (1999).

An administrative law judge found in the present matter, "4. Medical treatment rendered to the claimant in connection with the September 15, 2008, left total knee replacement under the care of Dr. Patrick LeCorps, was reasonably necessary in connection with the treatment of the February 18, 2008, compensable left knee injury." The Full Commission affirms this finding. The parties stipulated that the claimant sustained a compensable left knee injury on February 18, 2008. An MRI of the claimant's left knee in March 2008 showed joint effusion, a possible meniscal tear, and chondromalacia. After diagnosing a sprain of the medial collateral ligament in the claimant's left knee, Dr. Schechter performed surgery on May 19, 2008. The post-operative diagnosis was left knee medial meniscus tear and left knee osteoarthritis with synovitis.

Dr. Schechter noted on July 17, 2008, "She seems to have plateaued with her surgical improvement. She did have some relief with surgery, but has residual pain. As we have discussed on prior occasions, I really believe her residual pain is related more so to her underlying arthritis than her work injury....we are going to have to defer treatment until Work Comp clarifies whether or not they are going to handle this as a Work Comp claim or if the patient needs to file this with her private insurance." The claimant began treating with another physician, Dr. LeCorps, in August 2008. Dr. LeCorps diagnosed "severe osteoarthritis of the left knee" and performed knee replacement surgery on September 15, 2008. Dr. LeCorps noted in October 2008 that there was "practically no pain" in the claimant's left knee following surgery.

The Full Commission finds that the claimant proved surgery provided by Dr. LeCorps was reasonably necessary in connection with the compensable injury. Employment circumstances which aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). Dr. Schechter opined on May 29, 2008 and July 17, 2008 that the claimant's continued

knee problems were related to the claimant's arthritis rather than the compensable injury. However, Dr. Schechter stated on June 26, 2010 that the claimant's compensable injury exacerbated the claimant's condition and essentially agreed that the compensable injury "accelerated" the claimant's need for total knee replacement surgery. Likewise, Dr. LeCorps stated on July 19, 2010 that the compensable injury "accelerated" the arthritic process in the claimant's knee and "caused a torn meniscus for which she had surgery and the partial meniscectomy she had further contributed to more arthritis to the knee and the need to have the joint replaced."

It is within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, there are no medical opinions of record which contradict the opinions of treating physicians Dr. Schechter and Dr. LeCorps. Both physicians eventually opined that the claimant's compensable injury "exacerbated" and "accelerated" the claimant's pre-existing arthritic condition, leading to the claimant's need for total left knee replacement surgery performed by Dr.

LeCorps. The Full Commission therefore affirms the administrative law judge's finding that surgery performed by Dr. LeCorps was reasonably necessary in connection with the claimant's compensable injury.

B. Temporary Disability

For scheduled injuries the injured employee is to receive compensation for temporary total disability during the healing period or until the employee returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a) (Repl. 2002); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Whether an employee's healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

An administrative law judge found in the present matter that the claimant was "temporarily totally disabled for the period September 15, 2008, and continuing through June 15, 2009." The Full Commission finds that the claimant proved she was entitled to temporary total disability benefits from September 15, 2008 through November 18, 2008. The parties stipulated that the claimant sustained a compensable left knee injury on February 18, 2008. Dr. Schechter performed surgery and treated the claimant through July 17, 2008. The claimant subsequently began treating with Dr. LeCorps, who performed a left total knee replacement on September 15, 2008. The Full Commission has determined that the claimant proved Dr. LeCorps' treatment was reasonably necessary in connection with the compensable injury. The claimant contends that she was entitled to temporary total disability benefits beginning September 15, 2008. The evidence before the Commission indeed indicates that the claimant remained within a healing period and had not returned to work beginning September 15, 2008.

However, we reiterate Dr. LeCorps' note on November 18, 2008, "She is doing well with her knee replacement which was done about two months ago. Her problem is her right ankle

that she had a fracture six years ago." The claimant testified that Dr. LeCorps informed her the healing period for her left knee could continue for one year. There are no reports from Dr. LeCorps which corroborate the claimant's testimony in that regard. The claimant began treating for her nonwork-related right ankle condition beginning November 18, 2008, and there were no medical reports or opinions after that date indicating that the claimant continued within a healing period for her left knee. The evidence before the Commission demonstrates that the underlying condition causing the claimant's compensable disability had become more stable no later than November 18, 2008, and Dr. LeCorps did not recommend any further treatment for the claimant's left knee after November 18, 2008. The Full Commission therefore finds that the claimant reached the end of her healing period no later than November 18, 2008. The persistence of pain is not sufficient in itself to extend the healing period. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Temporary total disability cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987). The Full Commission finds that the

instant claimant proved she was entitled to temporary total disability benefits from September 15, 2008 through November 18, 2008.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's opinion as modified. The Full Commission finds that the claimant proved she was entitled to a left total knee replacement performed by Dr. LeCorps. The claimant proved that all of the medical treatment of record for her left knee was reasonably necessary in connection with the compensable injury, including surgery performed by Dr. LeCorps. The claimant proved she was entitled to temporary total disability benefits from September 15, 2008 through November 18, 2008. The respondents are entitled to an appropriate credit in accordance with Ark. Code Ann. §11-9-411(a) (Repl. 2002). The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2002). For prevailing in part on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500) pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. McKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

After my de novo review of the entire record, I concur with the majority opinion that the claimant proved her entitlement to a left total knee replacement and that the claimant was entitled to temporary total disability benefits; however, I must respectfully dissent from the majority opinion's finding that she was only entitled to temporary total disability benefits through November 18, 2008.

The claimant had total knee replacement on September 15, 2008. The record does not indicate that the claimant has been released from care for her left knee or that the claimant reached maximum medical improvement for her left knee injury. One could guess that, because the claimant underwent ankle surgery on November 21, 2008, she

had healed from her knee surgery. This guess would be based upon Dr. LeCorps' statement on October 7, 2008, that the claimant may need to have ankle fusion surgery when she "heals from the total knee." However, it would merely be a guess, which is unacceptable in and of itself, and which fails to take into account several facts. First, as noted above, there is no doctor's opinion releasing the claimant from care for her left knee or placing her at maximum medical improvement. Second, on November 25, 2008, the claimant was seen for her knee. Dr. LeCorps noted that her knee was:

doing better. She has better range of motion. Her problem is below the prosthesis that she has in the hip. She has thinning of the cortex of the femur due to low calcium level in her blood, so I gave her Os-Cal to take 500mg t.i.d. for the next 30 days, and then she will return for follow-up.

The record does not indicate, after that examination and concern regarding her knee, that she was released from care or to maximum medical improvement at any time. Lastly, Dr. LeCorps' comment regarding the claimant's healing from her surgery does not require a conclusion that the claimant had reached maximum medical improvement, because she had ankle surgery. There is no indication that

the doctor intended to say that the claimant must reach maximum medical improvement before the ankle surgery. A more reasonable conclusion from the facts, reached without speculation, is that the claimant's knee needed to be, and was, sufficiently healed to perform the ankle surgery, but that the claimant had not reached maximum medical improvement, as she continued to receive active treatment after the date of the ankle surgery. Therefore, the record does not support the majority's conclusion that the claimant reached maximum medical improvement on November 21, 2008.

For the foregoing reasons, I must concur with the majority's award of medical and indemnity benefits, but I must respectfully dissent from the majority opinion's limitation of temporary total disability benefits to the period from September 15, 2008 through November 18, 2008.

PHILIP A. HOOD, Commissioner