NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807950

CECIL F. BRIDGES, EMPLOYEE	CLAIMANT
FALLS OF NEUSE MANAGEMENT, LLC, EMPLOYER	RESPONDENT
ACCIDENT FUND INSURANCE COMPANY OF AMERICA, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 11, 2021

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

Claimant represented by the HONORABLE LAURA BETH YORK, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE KAREN H. McKINNEY, 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 December 15, 2020. 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 Claimant has proven, by a preponderance of the evidence, that he is entitled to additional medical treatment in relation to his compensable left knee injury of November 14, 2018, inclusive of temporary total disability benefits from February 5, 2020, through July 20, 2020;

3. The Respondents are entitled to a credit for any short-term

disability benefits paid to the Claimant in association with this matter during his period of temporary total disability of February 5, 2020, through July 20, 2020, pursuant to Ark. Code Ann. §11-9-411; and,

4. The Claimant is entitled to attorney's fees with respect to controverted indemnity 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. 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 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. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. § 11-9-715(Repl. 2012). For prevailing 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. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that Claimant is entitled to the additional medical treatment and to TTD until a date yet to be determined.

It is undisputed that Claimant has preexisting problems with both his knees. Claimant has long had arthritis in both his knees and has always been bowlegged. Near the end of July 2018, Claimant went to his primary care physician complaining of pain in both knees. The medical records indicate that Claimant reported that he could sometimes hear his knees grinding and popping when he stood up. The note from this visit also indicates “both knees are hurting, but left knee is worse.” More on this later.

On November 14, 2018, Claimant slipped in some oil at work and fell on his left knee. He told his employer the next day and was provided with medical treatment. Eventually, Claimant was treated by Dr. Riley Jones. The first MRI Dr. Jones ordered showed both acute and chronic meniscus tearing in Claimant's left knee. Dr. Jones performed a meniscectomy on January 7, 2019.

In March 2019, Claimant's physical therapy notes indicate that Claimant's knee was feeling better, and the pain was not as bad. In April 2019, Dr. Jones noted that Claimant was no longer experiencing pain. In May 2019, Dr. Jones again noted that Claimant had no complaints of pain. On May 25, 2019, Dr. Jones released Claimant at maximum medical improvement and assigned a 10% impairment rating to Claimant's lower extremity.

Near the end of July 2019, Claimant returned to Dr. Jones and reported that he had been experiencing swelling in his knee for about a month. Eventually, Dr. Jones determined that Claimant was a candidate for a total knee replacement, which Dr. Simard performed in May 2020. In August 2020, Dr. Jones was provided a copy of the July 2018 office notes and asked to give in opinion as to whether Claimant's workplace incident was the cause for Claimant's knee-replacement surgery. Dr. Jones responded that the need for the knee-replacement surgery was not caused

by Claimant's workplace injury. In other words, Dr. Jones is of the opinion that Claimant's knee-replacement surgery was not reasonable and necessary medical treatment in connection with Claimant's compensable injury.

The law requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee. Ark. Code Ann. §11-9-508(a).

Ark. Code. Ann. § 11-9-102(4)(A)(i) defines a compensable injury as "an accidental injury causing internal or external physical harm to the body... arising out of and in the course of employment and which requires medical services or results in disability or death." Section 11-9-102(4)(A)(i) goes on to define an accidental injury as one that is caused by a specific incident and is identifiable by time and place of occurrence.

A claimant has the burden of proving, by a preponderance of the evidence, that his injury is compensable. *Williams v. Baldor Elec. Co.*, 2014 Ark. App. 62. A compensable injury must be established by medical evidence supported by objective findings. Ark. Code. Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the claimant. Ark. Code. Ann. § 11-9-102(16).

An employee is entitled to temporary-total-disability benefits for a scheduled injury during the healing period or when the employee

returns to work. Ark. Code Ann. § 11-9-521(a); s*ee*, *e.g.*, *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. Accordingly, to be entitled to temporary-total-disability benefits, a claimant must prove that she or he remains within the healing period and suffers a total incapacity to earn wages. *Smallwood v. Ark. Dept. of Human Servs.*, 2010 Ark. App. 466, *7, 375 S.W.3d 747, 751. *Hope Sch. Dist. v. Wilson*, 2011 Ark. App. 219, *2, 382 S.W.3d 782, 785.

The healing period is that period for healing of an accidental injury that continues until an employee is as far restored as the permanent character of the injury will permit. The healing period ends when the condition causing the disability has become stable and nothing in the way of treatment will improve the condition.

Generally, liability for medical treatment may extend beyond the healing period as long as the treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). The persistence of pain, however, is not sufficient in itself to extend the healing period. *See Bray v. International Wire Group*, 95 Ark. App. 206, 235 S.W.3d 548 (2006), *Smallwood*, *supra*.

Likewise, pain management that does not improve the underlying condition does not extend the healing period. *Id.*

The Commission has the duty to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

First, I note that the ALJ may have underemphasized the July 2018 treatment as being more related to Claimant's *right* knee. In the Opinion, the ALJ seems to discount the visit by pointing out the *right* knee was the primary complaint. The medical records, however, note that Claimant's chief complaint was his *left* knee. At any rate, it is undisputed that Claimant had preexisting problems with both his knees.

In April 2019, as Dr. Jones was winding down treatment for Claimant's workplace injury, he noted that Claimant's pain was at a 0/10. In May, Dr. Jones noted that Claimant reported having no pain or occasional pain in the left knee and was basically without complaints. Given Claimant's recovery, Dr. Jones determined that Claimant had reached maximum medical improvement and discharged Claimant from his care on May 23, 2019.

More than two months later, Claimant returned to Dr. Jones reporting that, although he could not remember any specific injury to his left knee, he had been experiencing pain and swelling for nearly a month.

In August 2020, Dr. Jones was sent a copy of the July 2018 treatment notes (mentioned about) and asked to give an opinion on what necessitated Claimant's knee replacement surgery. Dr. Jones responded that the workplace injury did not necessitate Claimant's need for knee-replacement surgery.

I believe that it is possible for a worker with a preexisting condition to suffer a compensable aggravation, recover from the aggravation, and then later need medical treatment in the same area (*e.g.*, a knee) that is causally unrelated to the workplace incident. The question necessitates an analysis of how much time must pass before we can say that two treatments to the same body part (*e.g.*, a knee) are causally unrelated. Because such an analysis is subjective, reliance must be placed on medical opinion.

It is undisputed that for the month leading up to Dr. Jones releasing Claimant and for the month following, Claimant was having no problems with his left knee (other than he had before the workplace incident that aggravated his preexisting condition – which as noted above was symptomatic just prior to the workplace incident). Dr. Jones opined that

Claimant's knee-replacement surgery was not necessitated by his workplace incident. We cannot arbitrarily and without explanation ignore this medical evidence. *See, e.g., Tyson Poultry, Inc. v. Montelongo*, 2019 Ark. App. 535, at 8, 589 S.W.3d 449, 453-54.

Because I would find that Claimant had recovered from the temporary aggravation of his preexisting condition caused by the workplace incident, and, because I would give credit to Dr. Jones's medical opinion, I would find that Claimant failed to prove that he is entitled to the additional medical treatment of the knee-replacement surgery.

Accordingly, for the reasons set forth above, I must dissent from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner