

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G807237

JAMES BROWN, EMPLOYEE

CLAIMANT

SUPERIOR STONEWORKS, EMPLOYER

RESPONDENT

FIRSTCOMP INSURANCE CO., CARRIER/TPA

RESPONDENT

OPINION FILED APRIL 22, 2021

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

Claimant represented by the HONORABLE JARID M. KINDER, Attorney at Law, Ozark, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed November 19, 2020. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on September 2, 2020 and contained in a pre-hearing order filed September 3, 2020 are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that he is entitled to additional medical

treatment; specifically, surgery in the form of a total knee replacement as recommended by Dr. Bolyard.

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 November 19, 2020 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.

SCOTTY DALE DOUTHIT, Chairman

CHRISTOPHER L. PALMER, Commissioner

Commissioner Willhite dissents.

DISSENTING OPINION

After my *de novo* review of the record in this claim, I dissent from the majority opinion, finding that the claimant has failed to prove by a

preponderance of the evidence that he is entitled to additional medical treatment; specifically, surgery in the form of a total knee replacement as recommended by Dr. Bolyard.

An 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). The claimant bears the burden of proving that he is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). Reasonable and necessary medical services may include those 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. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

An employee is not required to prove that his compensable injury is the major cause for the need for treatment unless he is seeking permanent benefits; when the employee has suffered a specific injury and is only seeking medical benefits and temporary total disability, the major-cause analysis is not applicable and the employee need only show that the

compensable injury was a factor in the need for additional medical treatment. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004).

On May 7, 2018, the claimant sustained a compensable right knee injury as a result of falling several feet off of a scaffold. On May 13, 2020, the claimant presented to the Emergency Department at Baptist Health with complaints of right knee pain and swelling. After this visit, the claimant began treating with Lance Clouse, NPC for his knee problems. The claimant underwent an MRI on June 21, 2018. The MRI revealed the following:

FINDINGS: There is a complex fluid distending the prepatellar bursa. This may represent a hemorrhagic effusion within the prepatellar bursa, prepatellar bursitis, etc.

Small joint effusion but a relatively large popliteal cyst which appears to contain some debris. Medial, lateral, cruciate ligaments intact.

There is marked articular cartilage loss at the medial compartment, near total loss of articular cartilage with subchondral reactive and cystic changes on either side of the medial compartment. Extrusion of the body of the medial meniscus. Extensive tear of the medial meniscus especially involving the body and the posterior horn.

Lateral meniscus intact.

At the patellar articular surface, there is significant cartilage loss especially centrally and at the medial facet.

IMPRESSION

1. The prepatellar bursa is distended with fluid, as well as some complex material which may reflect hemorrhage or complex fluid. Extensive anterior soft edema about the knee.
2. Advanced degenerative changes especially at the medial compartment where there is ...¹

On August 30, 2018, the claimant underwent a right knee arthroscopy to repair the meniscus tear.

In Dr. Keith Bolyard's Clinic Note from the claimant's August 21, 2018 visit, Dr. Bolyard attributes the claimant's right knee meniscal tear to his workplace accident. Dr. Bolyard noted the following:

Addressing his medially based right knee pain, he has had medications, activity modification, and injection for persistent symptoms that did not exist preoperatively. We discussed the aggravation of preexisting medial meniscal tear or a medial meniscal tear created from his fall. In the background there is his moderately advance arthritis. This was all discussed. He would like to pursue arthroscopy. ...

Dr. Bolyard again noted his belief that the claimant's meniscal tear was at least aggravated by his work accident in his surgical notes, as follows:

INDICATIONS: The patient is 47 years old. He fell off a scaffolding at work in the mid-part of the

¹ The remainder of this impression is on the second page of this report; however, page 2 of this report is not included in the record.

summer. He ended up eventually getting an MRI which showed arthritis and prepatellar bursal fluid, and he had a lot of swelling and bruising in his entire thigh area. This pretty much resolved, but his knee pain did not. We gave him a steroid injection with improvement, returning to baseline symptoms. Above is elected with known arthritis and possible aggravation of a degenerative meniscal tear; that was our working theory.

Following this surgery, Dr. Bolyard released the claimant with a 3% whole person impairment rating on October 16, 2018. At that time, Dr. Bolyard noted that the claimant had “remarkable arthritic change”.

The claimant continued to have pain in his right knee and returned to see Dr. Bolyard on June 18, 2019. X-rays taken during this visit showed “progression of arthritic changes of both knees, maybe a little bit more progression of the right knee more so than the left, but today’s films show complete loss of medial joint space of both knees, medially based osteophytes of both knees, lateral subluxation of both knees, maybe more pronounced in the left knee than the right”.

Dr. Bolyard noted, “[t]here is no surgical intervention to offer other than total knee arthroplasty. His discussion of the extent of his symptoms may warrant that.”

Dr. Clouse, the claimant’s treating practitioner, opined that the claimant’s need for a total knee replacement is due to his May 7, 2018 fall at work and that the surgery was a reasonable and necessary procedure.

I also find it noteworthy that, as indicated above, the claimant suffered from degenerative disease in both of his knees, yet only his right knee (which was injured in the accident) requires a total knee replacement.

The claimant's work accident does not have to be the major cause for the need for treatment, it merely has to be a factor in the need for treatment. The claimant's May 7, 2018 work accident was certainly a factor in the claimant's need for a total knee replacement. Thus, I find that the recommended total knee arthroplasty is reasonable, necessary, and causally connected to the claimant's compensable injury.

Therefore, for the foregoing reasons, I find that the claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment in the form of a total right knee arthroplasty as recommended by Dr. Bolyard.

For the foregoing reason, I dissent from the majority opinion.

M. Scott Willhite, Commissioner