

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H302325

ALISHA BERRY, Employee	CLAIMANT
HOME HELPERS OF NWA, Employer	RESPONDENT
AMTRUST NORTH AMERICA, Carrier	RESPONDENT

OPINION FILED DECEMBER 5, 2023

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 7, 2023, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on June 19, 2023, and a Pre-hearing Order was filed on June 20, 2023. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on March 7, 2023.
3. The claimant sustained a compensable injury to her right knee on March 7, 2023.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to temporary total disability benefits from March 10, 2023, to June 4, 2023.
2. Whether Claimant is entitled to additional medical treatment in the form of prescription medication and physical therapy.
3. The Claimant's weekly compensation rates.
4. Whether Claimant's attorney is entitled to an attorney fee.

Claimant's contentions are:

"The claimant contends that she is entitled to temporary partial disability benefits from March 8, 2023 through March 15, 2023 and temporary total disability benefits from March 16, 2023 through a date yet to be determined. The claimant further contends that her attorney is entitled to the statutory fee for such benefits."

Respondents' contentions are:

"The Respondents contend that work was made available to the claimant from March 8, 2023 to June 5, 2023. At that time Dr. Coker took the claimant off pending an evaluation by Dr. Miedema."

The claimant in this matter is a 43-year-old female who was employed by the respondent on March 7, 2023, as a home health or help aid when she sustained a compensable right knee injury. In direct examination testimony the claimant described her general job duties as follows:

Q What were you doing for Home Helpers? What was your job assignment?

A I went into clients' homes and if they needed a bath, I helped them with a bath. If they needed help to the toilet, I helped them to the toilet. I folded their clothes, swept their floors, mopped their floors.

The last client that I had, I was walking with him through his house for daily exercise. I hooked up his oxygen machine. I laid out food. Well, he had a feeding tube, so we would put liquid, his medicine into it, and I brought it to him and his wife fed that to him.

Changed their sheets, dishes.

Q All right.

A I mean that is just some of the stuff.

The claimant would go and work in different respondent-client's homes over the time she worked for the respondent. The claimant described her job assignment on March 7, 2023, and her compensable right knee injury on direct examination as follows:

Q And what assignment did you have on March 7th of 2023?

A I went into a client's home who had a feeding tube, a trachea. He couldn't walk other than with a walker and his body had been really weak. He didn't have much strength. I would help take all of his food over to where he sat and ate at. And I would bring all of the – I think there was like five different cups of water for him to brush his teeth and put his dentures in and stuff to fix his hair or comb it or whatever. He had a lot of different things. They were very particular on what all he needed and in order and everything was done in a timeline.

Q Did you also do things around the house, housekeeping type things?

A Yes. I folded the laundry, swept the floor, steamed the floor every day as well. I filled up their humidifiers. I opened their mini blinds so they would have light in the house. I did their dishes.

Q All right. Would you briefly describe the accident that occurred on March 7th of 2023.

A I was walking and slid on a mat. My right leg went forward and turned to the left and my left leg went up underneath me.

Q What physical difficulties did you experience at that time?

A It hurt and it was painful.

Q What hurt?

A I am sorry. My right knee. Sorry.

The claimant reported her injury on March 11, 2023, and was seen at Baptist Health Walk-In Clinic that same day. Following is a portion of that medical record:

Reason for Visit:

Knee Pain (right)

Patient's had right knee pain worsening as the week goes on. She slipped and clients house a few days ago and fell in the kitchen. Its been getting worse in the mornings and much worse this morning. Hurts to walk. Hurts to bend it. Feels swollen. She works in home health.

Assessment/Plan

1. Internal derangement of right knee (Primary)

- MRI Knee Right WO Contrast; Future; Expected date: 03/18/2023

- Ambulatory referral to Orthopedic Surgery

2. Acute pain of right knee

- XR Knee 3 Vw Right

3. Effusion of bursa of right knee

4. Fall on same level, initial encounter

I read x-ray and discussed with patient. I am concerned about internal derangement of the meniscus and the medial collateral ligament especially. She is having quite a bit of pain with extension and flexion and walking. We will place her on crutches. Discussed use. Do not want to immobilize in a has that will make it more stiff and swollen. However she needs to avoid bearing weight. Needs an MRI and orthopedic Surgeon. She will inform her work.

One March 22, 2023, the claimant underwent an MRI of her right knee at Baptist Health.

Following is a portion of that diagnostic report signed by Dr. Jennifer Wood.

1. Partial ACL tear or high-grade sprain

2. Horizontal tearing of the posterior horn of the medial meniscus

3. Abnormal appearance of the posterior horn of the lateral meniscus extending to the inferior articular cartilage (best seen on image 21 of series 4) is also concerning for a tear.

On March 28, 2023, the claimant was seen at Baptist Health by orthopedic surgeon Dr. Jeffrey Evans. Following is a portion of that medical record:

Chief Complaint
- Knee Pain (Right Knee Pain)

Assessment and Plan:

1. Acute pain of right knee (Primary)
- XR Knee 1 Vw Right

2. Sprain of anterior cruciate ligament of right knee, initial encounter

Assessment & Plan

My personal reading of X-rays of right knee are normal and MRI right knee shows an anterior cruciate ligament tear and posterior horn medial meniscus rear.

Continue NWB on right leg with crutches.

She will file work comp claim.

She will need right knee arthroscopy for anterior cruciate ligament reconstruction and partial meniscectomy soon.

3. Complex tear of medial meniscus of right knee as current injury, initial encounter

Assessment & Plan

See above.

On April 30, 2023, the claimant went to the emergency department at Mercy Hospital where the claimant continued to complain of pain and difficulties with her right knee. A portion of that emergency department record follows:

Medical Decision Making

Differential diagnosis includes: Cellulitis, contact dermatitis, hematoma, effusion, DVT, other

The patient is a 42-year-old female with history of recent right knee injury resulting in a medial meniscus tear and ACL tear that presents to the emergency department for evaluation of right knee pain with overlying skin color changes. The patient's examination demonstrates patient has rash that is consistent with cellulitis overlying the right knee with a prepatellar effusion, no additional acute significant abnormalities. Laboratory evaluation

demonstrates benign laboratory evaluation. Imaging studies show knee x-ray shows some mild soft tissue swelling without acute additional abnormal findings per my interpretation. Doppler ultrasound right lower extremity demonstrates no acute abnormality. EKG shows not performed. Interventions in emergency department included patient received Toradol for pain control with no relief. She received Dilaudid and Benadryl. The patient had mild improvement. She received her first dose of antibiotic in the emergency department. Patient was discharged with oral pain pill tablets and next dose of Bactrim as she cannot get her medications until the afternoon. The patient was prescribed course of Bactrim and additional pain medication. She was referred back to our orthopedic surgery group as she is having some difficulty navigating the Workmen's Comp follow-up instructions due to miscommunication. The patient understands close return precautions and is agreeable with outpatient management.

The claimant then began to treat with Dr. Tom Coker at Ozark Orthopedics on May 5, 2023. On May 5, 2023, Dr. Coker examined the claimant and reviewed her previous diagnostic results regarding her right knee.

HPI

42-year-old white female who got hurt at work on March 7 she slipped. She has a job that does not have sitdown duty apparently. She went to a med a quick type facility had x-rays which I reviewed look normal the reports normal. Has not worked since that incident maybe about a week later she was sent elsewhere had other x-rays again. I have some x-rays dated that look like what she is talking about and they look normal and she has crutches she has been almost nonweightbearing since this happened because it hurts is her pain is mostly medial with the initial injury she is not real sure the mechanism of injury but could have been a twist it was not a direct blow she is not sure but did not hear a pop swelling occurred but not immediately but there is pain with weightbearing pain with motion and now the pain is more diffuse. She had an MRI done which I reviewed the initial report says normal MRI and there is an addendum to it where they state there may be a torn lateral meniscus and a partial tear of the ACL. I have reviewed the MRI in my opinion the MRI is normal or correct on the first viewing but not the second. Her menisci do not have tears I believe they have some intrameniscal signal. The ACL is intact it could have been sprained but I do not see a surgical torn ACL in her. She is now 6 or 7 weeks out from her injury and is still unable

to bear weight as she was placed in a knee immobilizer after the MRI I believe she saw an orthopedic surgeon and discussed ACL reconstruction etc. After being placed in her knee immobilizer she developed a cellulitis when to the ER this past Sunday and was placed on antibiotics she had redness swelling medially and she partially blames it on that knee immobilizer rubbing it I am not sure but it does not sound like there is a hematoma from the first injury that got infected and it may have just been a superficial cellulitis. She has not been treated with antibiotics for for 5 days and is resolving.

The claimant underwent a second MRI of the right knee at the recommendation of Dr. Coker on May 22, 2023. The impression section states, “There is a bone contusion in the anterior medial femoral condyle.”

Dr. Coker again saw the claimant on June 5, 2023, with the benefit of having been able to review her second right knee MRI. Following is a portion of his report:

HPI

42 Y female here for MRI results MRI shows normal menisci normal ligaments a bone contusion medial femoral condyle. She works in healthcare take care of people she fell 3 months ago down in Fort Smith she was seen by Fort Smith Dr. And a second opinion was wanted because he was discussing surgery for torn ACL torn meniscus. I reviewed her old MRI did not see that kind of pathology and we have repeated her MRI to confirm that her menisci are fine her ACL is intact she does not need surgery. What she has now are mottled skin and shiny skin hypersensitivity to tough numbness to the toes but good capillary refill and signs consistent with reflex sympathetic dystrophy. We discussed the fact that she has no surgical problems with her knee but her contusion at work is because this RSD type of picture. Therefore I am going to recommend that she see a physical medicine and rehab physician we have 1 or 2 in our group with Dr. Miedema and Dr. BJ Diana. He could all but so she could be followed up by whoever Worker’s Comp. wants her to see if there have a PMNR doctor in mind or a neurologist. This point was already started PT Sorg and continue PT until they can be further evaluated we discussed the fact I want full range of motion full weightbearing and offered crutches. Discussed the fact that this is RSD the treatment is a physical therapy to regain mobility and then beyond that there may be other treatments that a physical medicine rehab her neurologist

might recommend. This is not an orthopedic surgical problem at this point if this was a simple fall and contusion she would have already returned to work but we have this other diagnosis that I believe is work-related. So we will continue. So we will continue PT until she has had a change to make arrangements to see other medical specialist thank you.

Assessment/Plan

Assessment of her diagnosis of contusion right knee she may be full weightbearing full range of motion

1. Body mass index 25-29 – overweight
Z68.25; Body mass index (BMI) 25.0-25.9, adult
BODY MASS INDEX: CARE INSTRUCTIONS

2. Contusion of right knee
S80.01XA: Contusion of right knee, initial encounter
PHYSICAL THERAPIST REFERRAL – Schedule Within:
provider's discretion. Note to Provider: Contusion w/RSD on right
knee, full ROM, full strengthening, full weightbearing

3. Complex regional pain syndrome type 1
Reflex sympathetic dystrophy of right knee
G90.521: Complex regional pain syndrome 1 of right lower limb

On the recommendation of Dr. Coker, the claimant was seen by Dr. Mark Miedema at Ozark Orthopedics on June 14, 2023. Dr. Miedema examined the claimant and provided an assessment and plan as follows:

Assessment/Plan

ODI 37 Completely disabled

1. Pain of right knee joint
Ms. Berry presents for evaluation of About 3 months right knee pain. She had an injury at work in March which precipitated her symptoms. She had a fall while at work. She was not having pain prior to this injury. She saw Dr. Coker. She had a recent MRI. She has been having to use crutches to get around. She has been going to PT.

She had an MRI of the right knee at Ozark on 5/22/2023 which showed a contusion of the anterior medial tibial condyle. M25.561: Pain in right knee.

2. Complex regional pain syndrome type 1

Right lower extremity CRPS type 1 after a fall and subsequent bony contusion. This patient qualifies for diagnosis of Complex Regional Pain Syndrome (CRPS) Type 1 based on the Budapest criteria presenting symptoms of allodynia & hyperalgesia, with associated vasomotor/sudomotor changes. She saw Dr. Coker and there is no surgical indication at this time. She has been doing PT with significant ongoing pain and functional limitations. She cannot bear weight on her right leg and has been ambulating using crutches.

I would like her to continue with physical therapy for desensitization, strengthening and range of motion. I would like her to stop gabapentin and I would recommend starting Lyrica for neuropathic pain 50 mg twice a day. Would also recommend she start Celebrex 200 mg twice a day. Vitamin C supplementation could also be helpful.

Given the severity of the patient's pain and functional limitation and no relief or inability to tolerate conservative measures, we will proceed with right lumbar sympathetic block for diagnostic and therapeutic purposes.

I do not think she has reached maximum medical improvement. I do not think she can return to work at this time.

The claimant was seen by PA Wesley McGehee on July 26, 2023, at Ozark Orthopedics.

Following is a portion of that medical report:

Assessment/Plan

ODI 37 Completely disabled

1. Pain of right knee joint

Mrs. Berry presents for follow up evaluation of about a 4 month history of right knee pain. She had an injury at work in March of 2023 which precipitated her symptoms. She had a fall while at work. She was not having pain prior to this injury. She saw Dr. Coker. She had a recent MRI. She has been having to use crutches to get around. Since her last visit with Dr. Miedema on 6/14/2023 she has been taking the prescribed gabapentin pregabalin, Celebrex

and baclofen. She has also continued with the physical therapy for desensitizing techniques and attempts of improving range of motion. She presents today to review her progress from her recent procedure.

She had an MRI of the right knee at Ozark on 5/22/2023 which showed a contusion of the anterior medial tibial condyle.

On my review of her 4 view lumbar radiographs taken at Ozark on 7/26/2023 this reveals evidence of 5 nonrib-bearing lumbar vertebral bodies. Normal osseous alignment is noted. There is minimal evidence of degenerative disc height loss at L5-S1 slightly more progressed at L5-S1 comparatively. No listhesis identified. No acute fractures noted. M25.561: Pain in right knee.

2. Complex regional pain syndrome type 1

Right lower extremity CRPS type 1 after a fall and subsequent bony contusion. This patient qualifies for diagnosis of Complex Regional Pain Syndrome (CRPS) Type 1 based on the Budapest criteria presenting symptoms of allodynia & hyperalgesia, with associated vasomotor/sudomotor changes. She saw Dr. Coker and there is no surgical indication at this time. She has been doing PT with significant ongoing pain and functional limitations. She cannot bear weight on her right leg and has been ambulating using crutches.

She is s/p lumbar sympathetic nerve block on 7/3/23 with roughly 40% pain relief and functional improvement But for only a short time after this injection.

She does state the mottling associated/skin color changes in her right leg did improve after this injection. However, she still continues with significant pain and functional limitations. Despite the continued efforts with physical therapy and taking the pregabalin now up to 100 mg twice per day. Celebrex 200 mg twice per day and baclofen 10 mg 3 times per day a needed.

I would like for her to continue this medication regimen for now. She should also continue with the physical therapy for desensitizing techniques. And attempting to improve her rage of motion as much as tolerated.

Considering she did have some improvement especially with the skin changes in her right leg after the previous lumbar sympathetic

nerve block my recommendation is that we proceed to repeat this in hopes of more sustained relief.

I do not think she has reached maximum medical improvement. I do not think she can return to work at this time. We will extend her work excuse out until she follows up with us after this repeat lumbar sympathetic nerve block.

We also discussed today that neuromodulation could be a good treatment modality for her in the future.

Additionally, I did obtain lumbar radiographs today to assess for any significant evidence of lumbar spondylosis. We may obtain a lumbar MRI in the future depending on her response to the lumbar sympathetic nerve block.

I will plan to follow-up with the patient after this procedure to reassess their progress.

G90.521: Complex regional pain syndrome 1 of right lower limb.
NERVE BLOCK, LUMBAR SYMPATHETIC (PROC) – Note to
Provider: Right lumbar sympathetic nerve block 64520

3. Low back pain

M54.50: Low back pain, unspecified
L-SPINE 4 OR 5 VIEWS

The final medical record introduced into evidence in this matter is a report by PA Wesley McGehee from the claimant's August 17, 2023, visit. A portion follows:

Assessment/Plan

1. Pain of right knee joint

Mrs. Berry presents for follow-up evaluation of about a 5 month history of right knee pain. She had an injury at work in March of 2023 which precipitated her symptoms. She had a fall while at work. She was not having pain prior to this injury. She saw Dr. Coker. She had a recent MRI of the right knee. She has been having to use crutches to get around. Since her last visit with Dr. Miedema on 6/14/2023 she has been taking the prescribed pregabalin, Celebrex and baclofen. She has also continued with the physical therapy for desensitizing techniques and attempts of improving range of motion as well as exercises for her lumbar spine. She presents today to review her progress from her recent procedure and to discuss additional treatment options.

She had an MRI of the right knee at Ozark on 5/22/2023 which showed a contusion of the anterior medial tibial condyle.

On my review of her 4 view lumbar radiographs taken at Ozark on 7/26/2023 this reveals evidence of 5 nonrib-bearing lumbar vertebral bodies. Normal osseous alignment is noted. There is minimal evidence of degenerative disc height loss at L5-S1 otherwise disc space heights are relatively well-maintained. Mild evidence of facet arthropathy noted at L4-5 and L5-S1, M25.561: Pain in right knee.

2. Complex regional pain syndrome type 1

Right lower extremity CRPS type 1 after fall and subsequent bony contusion. This patient qualifies for diagnosis of Complex Regional Pain Syndrome (CRPS) Type 1 based on the Budapest criteria presenting symptoms of allodynia & hyperalgesia, with associated vasomotor/sudomotor changes. She saw Dr. Coker and there is no surgical indication at this time. She has been doing PT with significant ongoing pain and functional limitations. She cannot bear weight on her right leg and has been ambulating using crutches.

She is s/p lumbar sympathetic nerve block on 7/3/23 with roughly 40% pain relief and functional improvement but only a short time after this injection.

She reported during her follow up appointment on 7/26/2023 that her skin mottling associated/skin color changes in her right leg did improve after the initial injection.

We therefore proceeded to repeat the left lumbar sympathetic nerve block which was done on 8/3/2023 with a report of 40% pain relief but for only 4 days after the injection. She states the repeat injection did cause numbness surrounding the area of her right knee. However, she states the injection did cause a flare in pain in her right hip progressing across her pelvis to her left side.

She has continued working with physical therapy for improving range of motion and desensitization techniques. She also has been incorporating exercises for her lumbar spine as previously instructed.

She continues to utilize pregabalin 100 mg twice per day, Celebrex 200 mg once per day, and baclofen 10 mg 3 times per day as

needed. She request refills of these medications which I will provide.

At this point, I would recommend electrodiagnostic examination of the right lower extremity to further elucidate pathology and evaluate for a radiculopathy verses peripheral nerve entrapment versus peripheral neuropathy.

She is to continue to contemplate the option of neuromodulation.

I do not yet think she has reached maximal medical improvement. I do not think she can return to work at this time. We will extend her work excuse out until she follows up with us to review the results of her electrodiagnostic study and the MRI of the lumbar spine.

G90.521: Complex regional pain syndrome 1 of right lower limb.
ELECTROMYOGRAM + NERVE CONDUCTION STUDY.
Note to Imaging Facility: EMG/NCS right lower extremity, eval for peripheral neuropathy, peripheral nerve entrapment vs. lumbar radiculopathy.

Pregabalin 100 mg capsule – Take 1 capsule(s) every day by oral route for 30 days. Qty: (30) capsule. Refill: 2.

Celcoxib 200 mg capsule – Take 1 capsule(s) every day by oral route for 30 days. Qty: (30) capsule. Refill: 2.

Baclofen 10 mg tablet – Take 1 tablet(s) 3 times a day by oral route as needed for 30 days. Qty: (90) tablet. Refill: 2.

Pharmacy: Hudson Pharmacy

3. Lumbosacral radiculopathy

We reviewed the minimal to mild evidence of Mild evidence of degenerative disc change and facet arthropathy identified on her lumbar radiographs obtained during her last visit.

She has been working with physical therapy. She has significant pain and functional limitations. She has not improved with conservative treatment measures thus far.

In an effort to rule out the presence of any significant amount of central canal stenosis or neuroforaminal narrowing I do think it is appropriate to proceed with obtaining an MRI of the lumbar spine. The results of this advanced imaging could help further tailor our treatment plan depending on what pathology this may reveal.

I will plan to see the patient back to review the results of the lumbar MRI and her electrodiagnostic study once they have been performed.

M54.17: Radiculopathy, lumbosacral region
RADIOLOGIST REFERRAL. Schedule Within: provider's
discretion. Note to Provider: MRI of lumbar spine without
contrast.

The claimant has asked the Commission to determine whether she is entitled to additional medical treatment in the form of prescription medications and physical therapy. In review of the medical evidence submitted at the hearing and provided to the claimant by multiple physicians and a physician's assistant, I find that all of the medical treatment regarding prescription medications and physical therapy for the claimant's compensable right knee injury to be reasonable, necessary treatment for her compensable right knee injury.

The claimant has asked the Commission to determine whether she is entitled to temporary total disability benefits from March 10, 2023, to June 4, 2023. It is clear from the medical records that the claimant was placed on crutches and to avoid bearing weight on March 11, 2023, at her initial visit to Baptist Health Walk-In Clinic. The same restrictions continued on the claimant through different medical providers well past the claimant's June 4, 2023, temporary total disability requested end date. During the timeframe of March 10, 2023, to June 4, 2023, the claimant was within her healing period and placed on restrictions of no weight bearing and was required to use crutches.

The respondent called Kimberly Coffey as a witness in this matter. Ms. Coffey recently changed her last name from Davison to Coffey due to marriage. Ms. Coffey is a hiring manager for the respondent and managed the claimant's assignments for the respondent. It is the respondent's contention that the claimant had work made available to her for March 10, 2023, to June 4, 2023, within her restrictions. Following is a portion of Ms. Coffey's direct examination testimony:

Q Okay. Now, after she was hurt and you all got the light-duty slip, did you visit with her about coming back to work?

A Yes, sir.

Q Would you tell Judge Wells about that.

A I asked her if she could come back to work on a limited basis.

THE WITNESS: Yes. She was asked to do some light duty, whether or not she could go in and do the peri-care. She was asked if she could take him his toothbrush, his stuff to clean up with in the morning, to shave, to fix his hair, brush his teeth. Just general hygiene stuff.

Q [BY MR. FRYE] Okay. Now, she had a sit-down. Were these things that she could do sitting down?

A Yes, sir. She could sit down and do those.

Q Okay. Now, let's be clear. There were other people in the house, were there not, that could help with any other patient care?

A Uh-huh.

Q And who were those people?

A It was Mr. Nguyen's wife, which she did a lot of the care for him, like his feeding tubes and everything. And Mr. Nguyen's daughter, who worked from home. I asked –

Q Go ahead.

A I did ask Ms. Berry if she would be able to do it just sitting in a chair beside his bed encouraging him to do his exercise. She said that she was unable. I asked her – because she said she couldn't carry a cup, so I asked her, "Well, maybe Ms. Nguyen can carry the cups for you or you could carry one cup at a time and set with him while he does his morning routine."

Q Okay.

A And she said that she was not able to do it.

Q All right. About how many – I know this started in March. About how many times did you contact her about maybe coming back to work?

A I contacted her several times.

Q And then after the deposition, did you also again reach out to her?

A I did.

Q Tell me about that situation.

A We had a client that he was a younger man, all he wanted to do was sit at his table and play games, talk to someone, just wanted companionship. It was more of a respite type situation so that his mother would have a little bit of time to herself to do whatever she needed to do.

It wasn't my knowledge, but when I called her and asked the mother if it was okay, that she come out, the mother told me that he had just had surgery on his arm and that he could be a fall risk and that she would prefer someone who was more stable on their feet.

Q Okay. Did you make an offer of another job at that time?

A I asked her if she would like to go back to Mr. Nguyen or someone else where she was basically sitting down, where there were other people in the house, and she did decline.

Ms. Coffey was cross examined by the claimant's attorney about the offers of light or restricted duty work the respondent alleges they made to the claimant as follows:

Q Okay. Now, this job that you could do just sitting down, would that entail or having her to get in the car and drive to the place?

A Yes, sir.

Q And would it require to walk from the car to the place?

A Yes, sir.

Q And would it require her to walk in the house?

A Yes, sir.

Q So she wasn't just sitting there. She wouldn't just be automatically sitting there at a table and giving him a cup. There is other things that would involve moving around and movement involved; is that correct?

A Once she got to the house, her limitation would be – her movement would be very limited.

Q Well, it might be limited, but there would be some movement?

A Of course.

Q The fact that she is using crutches to move around, would that interfere with doing some of this stuff?

A Not in my opinion. I have been on crutches several times. I tore my knees before so I have been on crutches and I know what it feels like and I know what I did. I know what I was able to do.

Q So you are just saying just gut it out and do what you've got to do?

A Well, if you are on crutches, you are not putting any weight on your knee.

Q But you are just saying do what you've got to do?

A If you are wanting a paycheck, you have to do some –

Q If the doctor says you need to just do certain things, not do certain things, you have got to decide whether you want to get paid or whether you want to not do those things; is that right?

A Of course. But just like you would be at home, you would be getting up, going to the restroom, getting yourself something to drink.

Q Sure. Well, you might be. You might be lucky enough to have someone at least bring you something to drink.

A If you are very lucky, yes.

Q Okay. Now, this other job that you offered her or these frequent jobs that you offered her, she just flat turned them down?

A Yes, sir.

Q And you thought they were within her limitations?

A Yes, sir.

Q Did she tell you she turned them down because she didn't think they were?

A She did.

On direct examination, the claimant testified about an offer of light duty work extended to her by the respondent as follows:

Q Now, during your period of treatment, did the Respondents ever offer to return you to light duty?

A Can you repeat the question?

Q Did they ever offer to provide you a job within your medical restrictions?

A Has work offered to do that?

Q Yes.

A The only time work offered to do that was the day after the deposition, I got a call.

Q All right. And did you – what happened with that?

A So I got a call and I think I was told – I don't know if it was four or four and a half hours, three days a week for a gentleman and all I would have to do is board games and puzzles because his mom takes care of everything else.

Within that same hour, I got a call back from Ms. Kim over here telling me that he had to have arm surgery and he needed more assistance like using the bathroom and taking a shower. And

I asked her how I was supposed to do that when I am on crutches and it says light duty and she goes, “I don’t know. You can’t.” That is what happened.

Q Did they offer you another job after that, something after that?

A No. I have never heard back from them about doing any other job. But then after that, I was taken completely off of work at some point.

Q Okay. During this period of time, how has your condition changed or been? Has it gotten any better, gotten any worse or stayed the same?

A My condition has gotten worse.

Here, the respondent witness, Ms. Coffey, in her direct examination testimony states, “She was asked if she could take him his toothbrush, his stuff to clean up with in the morning, to shave, to fix his hair, brush his teeth. Just general hygiene stuff.” Ms. Coffey testified that she could perform these duties sitting down. However, I find it unreasonable to say a job could be done in a seated position when you are taking hygiene products to someone. Ms. Coffey further testified that other people were in the home and could help with other patient care. This included the client’s wife and daughter, whom to my knowledge are not employees of the respondent. I find it unreasonable to expect the claimant to perform job duties in a physically restricted manner by relying upon the charity of others who are not employed by the respondent. The respondent did not provide work within the claimant’s restrictions during the period of time from March 10, 2023, to June 4, 2023.

The claimant’s restrictions were placed upon her on March 11, 2023, regarding her compensable right knee injury and she continued in her healing period beyond June 4, 2023. During that period work within her restrictions was not made available to her. As such, she is

entitled to temporary total disability benefits from March 11, 2023, until June 4, 2023, for her compensable right knee injury.

The parties were unable to agree on the claimant's compensation rates and have asked the Commission to determine those rates for them. Respondent Exhibit 1 is a collection of payroll records beginning March 5, 2022, and going to March 3, 2023; from and including Saturday March 5, 2022, to and including Friday March 3, 2023, there are 364 days or 52 weeks. Each payroll record indicates gross earnings for that given period. As such, all gross earnings for that time period were added together for a total of \$22,476.61. That number was divided by 52 weeks, making an average weekly wage of \$432.24. As to the claimant's temporary total disability rate, it is set at \$288.00 as \$288.15 is 66-2/3% of \$432.24, the claimant's average weekly wage. As to the claimant's permanent and partial disability rate, it is set at \$216.00, as it is 75% of the claimant's \$288.00 temporary total disability rate.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on June 19, 2023, and contained in a Pre-hearing Order filed June 20, 2023, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from March 11, 2023, to June 4, 2023.

3. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of prescription medications and physical therapy for her compensable right knee injury ordered by medical providers contained in the records submitted into evidence in this matter.

4. The claimant has proven by a preponderance of the evidence that her average weekly wage is \$432.24, her temporary total disability rate is \$288.00, and her permanent partial disability rate is \$216.00.

5. The claimant has proven by a preponderance of the evidence that her attorney is entitled to an attorney's fee in this matter.

ORDER

The respondents shall pay for medical treatment regarding prescription medications and physical therapy for the claimant's compensable right knee injury, including reimbursement for any out-of-pocket expenses.

The respondents shall pay the claimant temporary total disability from March 11, 2023, to June 4, 2023, at the temporary total disability rate of \$288.00.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits pursuant to Ark. Code Ann. §11-9-715.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

If they have not already done so, the respondents are directed to pay the court reporter, Veronica Lane, fees and expenses within thirty (30) days of receipt of the invoice.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**