

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906820

DEBRA BROWN, Employee	CLAIMANT
WESTWOOD PRIMARY SCHOOL, Employer	RESPONDENT
ARKANSAS SCOOOL BOARDS ASSOC. WCT, Carrier/TPA	RESPONDENT

OPINION FILED MARCH 4, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by ANDY L. CALDWELL, Attorney, Little Rock, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 8, 2021, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on July 30, 2020 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The employee/employer/carrier relationship existed between the parties on October 14, 2019.
3. The claimant sustained a compensable injury to her bilateral knees.

4. The claimant was earning sufficient wages to entitle her to compensation at the rates of \$323.00 for total disability benefits and \$242.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant is entitled to additional medical.
2. Whether claimant is entitled to temporary total disability benefits.
3. Attorney fee.

At the time of the hearing claimant acknowledged that respondent had paid temporary total disability benefits through February 25, 2020. Therefore, claimant is requesting payment of temporary total disability benefits from February 26, 2020 through a date yet to be determined.

The claimant contends that she received a change of physician from Dr. Bryan Smith to Dr. Joel Smith and respondent denied Dr. Joel Smith's recommended treatment. Claimant then began treating with Dr. Tom Coker and he performed a total knee replacement surgery on claimant's right knee. Claimant contends that the treating recommended and performed by Dr. Coker is reasonable and necessary medical treatment for her compensable injury. In addition, she also contends that she is entitled to payment of temporary total disability benefits beginning February 26, 2020 and continuing through a date yet to be determined.

The respondent contends that all appropriate benefits have been paid with regard to this matter. The claimant reached maximum medical improvement associated with her work related injuries on February 25, 2020. It is respondent's position that the claimant's need for medical treatment, if any, is associated with preexisting and underlying problems

and not her acute injury.

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 witness and to observe her 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 a pre-hearing conference conducted on July 30, 2020 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that the treatment provided by Dr. Coker, including a total knee replacement surgery, is reasonable and necessary medical treatment for her compensable injury.

3. Claimant has also proven by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning February 26, 2020 and continuing through a date yet to be determined.

4. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

FACTUAL BACKGROUND

The claimant is a 56-year-old woman who was employed by Greenwood Schools at Westwood Elementary as a maintenance custodian. Claimant was hired by respondent on October 24, 2018.

Claimant had previously worked in the utility department at Whirlpool for 18 years.

While working at Whirlpool the claimant had a work-related injury to her right knee in 1999 and underwent an arthroscopic procedure by Dr. Axelsen. Dr. Axelsen's medical report of February 26, 2002 indicates that he released claimant to return on an as-needed basis.

The next medical record regarding knee complaints is from Mercy Clinic dated April 11, 2019. That report indicates that claimant was having increased problems with chronic right knee pain and would like to return back to Dr. Smith for an evaluation of her pain. Medical records indicate that claimant was seen by Dr. Patrick Walton, PA, at Mercy Clinic Orthopedic on May 2, 2019. Claimant was diagnosed as suffering from osteoarthritis of the bilateral knees and was treated with an injection of both knees. Medical records indicate that just six days later claimant called and indicated that the injections had already worn off. As a result, Dr. Smith prescribed Mobic according to a report dated May 10, 2019.

It does not appear that claimant sought any additional medical treatment for her bilateral knees until after October 14, 2019. Claimant described her accident on October 14 as follows:

It was probably about 8:45 at night and I was walking out to the modular buildings to clean them. And there is no lights. Then I got my key and I unlocked the door. I reached in and stepped in to turn on the light and there was two tricycles right there in the front door that I stepped on and I fell on both.

The parties have stipulated that claimant suffered a compensable injury to her bilateral knees on this date.

Medical records indicate that claimant initially received medical treatment at Mercy Clinic in the form of medication, a knee brace, and work restrictions. Claimant was

eventually referred to Dr. Bryan Smith, orthopedic surgeon. At the time of claimant's initial visit with Dr. Smith on November 20, 2019, her primary complaint involved her left knee. Dr. Smith diagnosed claimant's condition as left knee pain secondary to exacerbation of underlying osteoarthritis. Dr. Smith treated claimant with Mobic, physical therapy, and a knee brace.

In his report of February 5, 2020, Dr. Smith indicated that claimant suffered from bilateral knee osteoarthritis and degenerative joint disease. He also ordered MRI scans of the claimant's knees.

In a report dated February 19, 2020, Dr. Smith indicated the MRI scan of claimant's right knee revealed chronic appearing meniscal tears both in the medial and lateral meniscus. He also noted that there were signs of wear on the posterolateral femoral condyle as well as in the medial compartment. It was his opinion that claimant would end up needing a total knee replacement and he believed at that time he had provided claimant all the medical treatment he could offer. He suggested that claimant follow-up with an occupational medical physician for further recommendations.

Claimant was seen by a second orthopedic surgeon, Dr. Joel Smith, on April 28, 2020. Dr. Smith recommended approval for Zilretta injections. According to claimant's testimony, this request for treatment was denied by respondent. Thereafter, on the recommendation of her own treating physician, claimant was referred to Dr. Tom Coker. Dr. Coker in his report of May 29, 2020 indicated that claimant suffered from osteoarthritis of the right and left knees. Although he and claimant discussed a total knee replacement, Dr. Coker chose to proceed with the use of Mobic for a few weeks.

When claimant's condition did not improve, Dr. Coker performed a right total knee

replacement surgery on September 1, 2020. As of the date of the hearing, claimant had not been released by Dr. Coker to return to work.

Claimant has filed this claim contending that the medical treatment, including surgery, provided by Dr. Coker is reasonable and necessary medical treatment for her compensable injury. She also requests payment of temporary total disability benefits beginning February 26, 2020, and continuing through a date yet to be determined.

ADJUDICATION

Claimant contends that the total knee replacement surgery provided by Dr. Coker and his follow-up treatment is reasonable and necessary medical treatment for her compensable injury. An employer is to promptly provide for an injured employee that medical treatment which may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

The facts in this case are similar to the facts present in *Moudy v. Fort Smith Police Department*, Full Commission Opinion filed July 29, 2020 (G901721). In that particular case, the claimant suffered compensable bilateral knee injuries when he fell through a wood deck while investigating an alarm call at a residence. Moudy, as the claimant in this case, suffered from pre-existing osteoarthritis. The issue in *Moudy* was whether a total knee replacement was reasonable and necessary medical treatment for Moudy's compensable injury. In finding that claimant had met his burden of proof, the Commission noted:

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. Ellen W. Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W. 3d 383 (2004).

The Commission in *Moudy* noted that claimant's treating physician had opined that claimant's on the job injury contributed to the development of his problem and that another treating physician had noted that claimant's pre-existing osteoarthritis had been exacerbated by the on the job injury. In finding that the claimant had met his burden of proof, the Commission stated:

The 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 July 20, 2018 work accident was certainly a factor in the claimant's need for a total knee replacement. Thus, we find that the recommended total knee arthroplasty is reasonable, necessary, and causally connected to the claimant's compensable injury.

For similar reasons, I find that the claimant in this particular case has met her burden of proving by a preponderance of the evidence that the total knee replacement surgery performed by Dr. Coker is reasonable, necessary, and causally connected to her compensable October 14, 2019 injury.

As previously noted, after her compensable injury the claimant came under the care of Dr. Bryan Smith. Dr. Smith diagnosed claimant as suffering from bilateral knee osteoarthritis. In his report of February 19, 2020, he indicated that he thought it was likely

that claimant would end up needing a total knee replacement. He also stated:

We have discussed from the beginning that this fall is an exacerbation of her underlying osteoarthritis.
(Emphasis added.)

Given Dr. Smith's indication that claimant might end up needing a total knee replacement, a claim supervisor for respondent posed various questions to Dr. Smith. Dr. Smith indicated that claimant had reached maximum medical improvement and that she needed no additional treatment for her work injury. Significantly, Dr. Smith was also asked the following question:

Is the need for the mentioned total knee replacement a direct result of the 10/14/19 work related injury or her pre-existing conditions?

In a handwritten response, Dr. Smith stated:

Pre-existing conditions
Work injury exacerbated pre-existing conditions.

Dr. Coker in his report of May 29, 2020 noted that claimant had a pre-existing arthritic condition in both her right and left knees. Dr. Coker eventually performed a right total knee replacement surgery on September 1, 2020. The parties took Dr. Coker's deposition on October 5, 2020. During the course of that deposition Dr. Coker agreed that it was fair to state that claimant's need for the knee replacement was the pre-existing osteoarthritis. However, he also indicated that claimant's fall exacerbated her pre-existing condition and resulted in the need for the total knee replacement.

Q. So first of all, is it more likely than not that the fall exacerbated her pre-existing condition causing this need for a total knee replacement?

A. Yeah, I think the fall exacerbated a pre-existing condition, yes.

Q. Again, the surgery was for the osteoarthritis, correct?

A. Correct.

Q. But the treatment was based upon the exacerbation of that, correct?

A. The treatment.

Q. All the treatment subsequent to October 14th of 2019 was based upon the exacerbation.

A. Correct.

Thus, while it is clear that claimant suffered from pre-existing osteoarthritis in her bilateral knees prior to October 14, 2019, it is also clear from a review of the medical opinions of Dr. Coker and Dr. Smith that claimant's compensable knee injuries resulted in an exacerbation of her pre-existing osteoarthritis. That exacerbation led to the need for the total knee replacement performed by Dr. Coker. As stated by the Commission in *Moudy*, the work accident does not have to be the major cause of the need for treatment, it merely has to be a factor in the need for treatment. I find that claimant's compensable injury of October 14, 2019 was a factor in her need for the right total knee replacement. According to the opinions of both Drs. Smith and Coker, claimant's injury exacerbated her pre-existing osteoarthritic condition. Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that the medical treatment, including total knee replacement surgery, performed by Dr. Coker is reasonable and necessary medical treatment for her compensable injury.

I also find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to continued temporary total disability benefits beginning February 26, 2020 and continuing through a date yet to be determined. The injuries to claimant's knees are scheduled injuries. An employee who suffers a scheduled injury is entitled to receive temporary total or temporary partial disability benefits during their healing period or until they return to work, regardless of whether there is a total incapacity to earn wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). Claimant acknowledged that respondent paid temporary total disability benefits through February 25, 2020. Here, the medical evidence indicates that claimant remains within her healing period for her bilateral knee injuries after that date. Furthermore, claimant has not returned to work for respondent or any other employer. While there were periods of time during which claimant was released to return to work with restrictions, claimant was not returned to work by the respondent. Since the time of her surgery by Dr. Coker, claimant has been off work completely at his instruction. Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits from February 26, 2020, the day after those benefits were last paid by respondent, and continuing through a date yet to be determined.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment provided by Dr. Coker. This includes the total knee replacement surgery. I also find that claimant has met her burden of proving

by a preponderance of the evidence that she is entitled to additional temporary total disability benefits beginning February 26, 2020 and continuing through a date yet to be determined.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

All sums herein accrued are payable in a lump sum and without discount.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$361.65.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE