BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G507559

DALE BRYANT, EMPLOYEE	**CLAIMANT**
CITY OF NORTH LITTLE ROCK,[1] SELF-INSURED EMPLOYER	**RESPONDENT NO. 1**
ARK. MUNICIPAL LEAGUE WCT, THIRD-PARTY ADMINISTRATOR	**RESPONDENT NO. 1**
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	**RESPONDENT NO. 2**

OPINION FILED APRIL 20, 2021

Hearing before Administrative Law Judge O. Milton Fine II on March 31, 2021, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Whitney B. James, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

Respondent No. 2, represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas, excused from participation.

STATEMENT OF THE CASE

On March 31, 2021, the above-captioned claim was heard in Little Rock, Arkansas. A prehearing conference took place on February 8, 2021. The Prehearing Order entered on that date pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

[1]The style has been corrected to reflect that the City of North Little Rock was Claimant's employer.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. After an amendment of Stipulation No. 3 at the hearing, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/self-insured employer relationship existed at all relevant times, including April 3, 2019, when Claimant sustained a compensable right knee injury.
3. Claimant's average weekly wage was $240.06.[2]

Issues

The parties discussed the issue set forth in Commission Exhibit 1. After amendments at the hearing to clarify the treatment being sought, the following was litigated:

1. Whether Claimant is entitled to additional medical treatment in the form of a partial right knee replacement and related treatment.

All other issues have been reserved.

Contentions

The respective contentions of the parties read:

[2]This average weekly wage would entitle him to compensation rates of $160.00/$154.00, per Ark. Code Ann. § 11-9-501(b) & (d)(1) (Repl. 2012).

Claimant:

1. Claimant contends that on April 3, 2019, while in the course and scope of his employment, he was wearing a backpack vacuum cleaner when he fell and twisted his right knee. An MRI on May 1, 2019, revealed a meniscus tear.
2. The claimant had surgery by Dr. Kirk Reynolds on May 10, 2019, and physical therapy following the surgery.
3. On March 17, 2020, Dr. Reynolds released the claimant at maximum medical improvement and opined that he was not entitled to a permanent partial impairment rating.
4. Because the clamant was still experiencing significant issues with his knee, he had a change of physician to Dr. Joel Smith. Dr. Smith recommended injections, which the claimant had. The injections helped temporarily.
5. Dr. Smith then recommended a partial knee replacement, which has been denied by respondents.
6. Claimant contends that he is entitled to additional medical treatment in the form of surgery.
7. All other issues are reserved.

Respondents No. 1:

1. Respondents contend that to date, the claimant has received all benefits to which he is entitled.

Respondent No. 2:

1. The Trust Fund defers to the outcome of litigation on the stated issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment in the form of a partial right knee replacement and related treatment.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Claimant's Exhibit 1, a compilation of his medical records, consisting of three abstract/index pages and 75 numbered pages thereafter; Respondents No. 1 Exhibit 1, another compilation of Claimant's medical records, consisting of six index pages and 207 numbered pages thereafter; and Respondents

No. 1 Exhibit 2, non-medical records, consisting of one index page and seven numbered pages thereafter.

ADJUDICATION

A. Whether Claimant is entitled to additional treatment of his stipulated compensable right knee injury.

Introduction. As the parties have stipulated, Claimant sustained a compensable injury to his right knee on April 3, 2019, while working for Respondent City of North Little Rock. In this action, he is seeking additional treatment in the form of a partial right knee replacement, along with related treatment. Respondents No. 1, in turn, deny that he is entitled to the surgery.

Standards. Arkansas Code Annotated Section 11-9-508(a) (Repl. 2012) states that an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown*, *supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The standard "preponderance of the evidence" means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). What constitutes

reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

A claimant's testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness's credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id*. In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id*.

Testimony. Claimant, who is 62 years old, testified that during the time period at issue, he was employed at Laman Library, which is part of the City of North Little Rock. There, he worked in housekeeping. Prior to April 3, 2019, he was having no problem with his right knee. The following exchange took place:

> Q. Describe what happened on April 3, 2019.
>
> A. I was wearing a back—you have to have a back-vac. It's a vacuum cleaner that you strap around your back. And I was doing stairs and I got entangled in the cord and lost my balance.
>
> Q. Did you fall all the way to the ground?
>
> A. No. I just did the next step and it twisted and popped.
>
> Q. Okay.

A. And after that, I was having a lot of pain, and so I reported it to my supervisor and we filled out an accident report.

Q. What body part did you injure?

A. My right knee.

Claimant underwent an MRI of his right knee, which revealed that he had a meniscal tear and bone fragments in the joint. He began treating with Dr. Kirk Reynolds. In May 2019, Reynolds performed arthroscopic surgery on Claimant's right knee. Thereafter, the doctor had him undergo physical therapy.

According to Claimant, the surgery did not help. His right knee condition is now "worser" [sic] than it was before the procedure took place. Eventually, Dr. Reynolds released Claimant to light duty and then full duty. Claimant's testimony was that he had problems performing his duties at the library: "I was having difficulty with the stairs and moving at a real fast pace and a lot of walking and standing." He disagrees with the decision of Reynolds to return him to regular duty. Claimant explained: "I'm still hurting, I'm still having a lot of pain, you know, doing my job. But I have to do it because I'm raising my grandkids, so I've got to do it." Later, he elaborated:

> It's pain, and after I do it, then it might be the next day I'm having a difficult time getting out of the bed or I'm putting Icy Hot or Ben Gay or something and then wrapping it up to keep the heat in, just anything to try to make it feel better. And taking Advil, Tylenol, you know, and elevating it. And I just go ahead on and go back to work.

He is still having swelling in his injured knee.

Following a change-of-physician order that Claimant sought and received from the Commission, he began treating with Dr. Joel Smith. The first treatment Smith

administered was an injection of the knee. Claimant's testimony was that he obtained relief from this; in fact, he felt like he no longer needed his knee brace, which he began using following the accident. But the ameliorative effects of the injection were temporary. Claimant has resumed use of the brace. He wants to undergo a second injection. But other than additional physical therapy, which Claimant stated that he received, the treatment that Dr. Smith has recommended consists of a partial right knee replacement. Respondents No. 1 have refused to approve this surgery.

Asked how his current knee symptoms affect his life, Claimant replied:

> Well, getting in and out of the tub. I don't get a chance to go fishing like I want to because certain places I can't go. And I don't like going out too much, like, I'm 62 years old, but I still like to dance a little bit. And me and wife, we do—we used to go out sometimes, and I stopped all that. You know, I don't do a lot of traveling with them. The—I let them go and I just stay at the house.

Claimant now has a limp, and uses a handicapped parking tag. It is his desire to undergo the partial right knee replacement.

On cross-examination, Claimant stated that his right knee condition never improved following the physical therapy and surgery that Dr. Reynolds had him undergo. When questioned about the records of his physical therapy that reflect that he told the therapist that his right knee pain had improved, Claimant responded: "I always complained . . . [a]nd I never stopped complaining about my knee and what I couldn't do." Asked whether the therapy records are incorrect, he answered:

> Well, I guess so, unless I'm lying. Somebody is lying then. Because I know that me, myself, I'm the one who was in pain. And I'd tell them, the ones that was doing physical therapy, I would tell them, "Hey, look, this is hurting, that's hurting, it's hurting me to do this."

However, Claimant later acknowledged that he presented to the therapist on some occasions as having improved pain, stating: "I'm pretty sure I might've had some good days and bad days." Dr. Smith's surgical recommendation came after a second MRI of the knee was performed.

Claimant agreed that there were exercises during his functional capacity evaluation that he declined to perform. Despite the fact that records of his April 1, 2019, visit to his personal physician, Dr. Sherri Diamond, reflect that he suffered an injury to his right knee at work, Claimant maintained that the injury at issue took place on April 3, 2019, and that he did not see Diamond before going to Concentra Clinic.

Under additional questioning by his attorney, Claimant stated that he complained to Dr. Reynolds that his (Claimant's) physical therapy records were incorrect. He also noted that his therapy records noted at times that he was still having severe pain in the knee.

Medical Records. Claimant's records in evidence reflect the following:

Claimant on April 1, 2019, reported to Dr. Diamond that he had suffered an injury to his right knee at work around five days prior. Her examination showed that he had mild edema in the knee. She made a referral to an orthopedist.

On April 5, 2019, Claimant presented to Dr. Troy Moore at Concentra Clinic with right knee pain that the former described as being 4/10 in severity and that began when he lost his balance while walking up the stairs at work. X-rays of the knee were normal, and the physical examination yielded no objective findings of injury, so Moore assessed

Claimant as having suffered a right knee strain. Claimant was sent for physical therapy. When he reported on April 16, 2019, that his knee condition had not improved, Moore sent him for an MRI. Dr. Moore on April 23, 2019, prescribed a knee brace for Claimant and gave him a work restriction of wearing that brace. The MRI took place on May 1, 2019.

The MRI of the right knee occurred on May 1, 2019. It revealed, inter alia, a small tear at the junction of the posterior horn/root of the medial meniscus, and a large joint effusion. Dr. Moore on May 3, 2021, stated that the "MRI findings appear to be degenerative in nature, I will consult ortho for their opinion."

On May 10, 2019, Dr. Reynolds saw Claimant. His examination of the right knee showed a moderate effusion; and, contrary to Moore, he found that the MRI "demonstrates a large traumatic effusion to the knee." He also noted that the MRI revealed a loose body in the medial gutter, and an abnormal signal in the posterior horn of the medial meniscus. Reynolds recommended a right knee arthroscopy with planned partial medial meniscectomy and loose body removal, and restricted Claimant to seated-duty only.

The surgery took place on May 28, 2019. Dr. Reynolds performed a right knee diagnostic arthroscopy with arthroscopic removal of loose body, and an arthroscopic chondroplasty of the medial femoral condyle. The post-operative diagnoses included

1. Right knee intra-articular loose body
2. Right knee traumatic arthropathy
3. Right knee recurrent effusions

4. Right knee pain

Claimant told Reynolds on June 7, 2019, that his knee pain was improving. Examination of the knee showed a trace effusion. The doctor removed his stitches and referred him back to physical therapy, restricting him to modified seating and sedentary duty. On June 14, 2019, examination of the right knee showed a large effusion. Dr. Reynolds noted that the effusion was acute in nature, and administered a steroid injection in the knee.

When Claimant returned to him on July 19, 2019, Reynolds wrote: "Today he states that he is still having a problem with fluid on his knee and with going up stairs which is in complete disagreement with what he had documented during physical therapy for the last 2 weeks."[3] Reynolds noted that during his physical therapy appointment on July 16, 2019, Claimant rated his knee pain as being 2/10. Examination by the doctor showed a small effusion. Reynolds continued him in physical therapy and modified his work restrictions to climbing stairs on an occasional basis.

Claimant told the therapist on July 23, 2019, that his knee was very sore and stiff, and that he had to return to work the previous day. But just seven days later, per the physical therapy report, his pain had improved from 6/10 to 1/10. Claimant told the therapist on July 30, 2019, that his knee was more painful and swollen than it has ever been since he had resumed working. This changed on August 6, 2019. Claimant informed the therapist that he was pain-free at the moment. After walking five flights of

stairs during the therapy session, his pain level was no more than 1/10. Two days later, on August 8, 2019, Claimant stated during his therapy appointment that his right knee was "killing" him since he had to absorb the duties of a co-worker. He told the therapist on August 22, 2019, that his knee was again pain-free and that he had felt really good the past week. But the next day, on August 23, 2019, Claimant told Dr. Reynolds that he was having continued knee pain, primarily along the anterior joint line. He complained that therapy was exacerbating his pain. Based on this, the doctor discontinued therapy. On October 9, 2019, Claimant complained to Reynolds of constantly sharp anterior right knee pain. Notwithstanding this, the doctor found him to be at maximum medical improvement and released him to full duty with a zero percent (0%) impairment rating.

On March 17, 2020, Claimant saw Dr. Smith for the first time. At that time, he rated his knee pain as 9/10. Smith administered a steroid injection. When Claimant returned on April 28, 2020, he rated his pain as being 7/10. The doctor ordered a second MRI of the right knee. Claimant on May 15, 2020, stated that his pain was 6/10.

The MRI took place on May 7, 2020. Dr. Smith reviewed it and wrote that it showed ovoid soft tissue anterior to the anterior cruciate ligament "that may represent arthrofibrosis." The MRI also reflected grade 2-3 and focal grade 4 chondromalacia involving the central portion of the weight-bearing surface of the medial femoral condyle. The doctor ordered visco-supplementation, opined that it was "related to greater than

[3]The therapist in the reports of each of those eight visits wrote that Claimant reported that his knee pain "has been getting steadily better since [the previous therapy

51% of his injury and is needed for treatment." He added that Claimant was not at maximum medical improvement.

The monovisc injection took place on June 16, 2020. During his return visit on August 3, 2020, Claimant reported that the visco-supplementation helped for about three weeks to a month, but that his knee pain had returned and was 9/10. Smith wrote:

> [Claimant] has a full thickness defect involving his MFC [medial femoral condyle] and has previously had loose body removal and chondroplasty. He has had steroid injections and visco[-]supplementation with only temporary short form relief. Given his age, I don't think an OATS [osteochondral autograft transfer system] or other cartilage restoration procedure would be available with insurance. I think the most reliable thing to do would be for a unicompartmental medial compartment arthroplasty vs. TKA [total knee arthroscopy], after inspection of the rest of the joint at the time of surgery.

In a letter to JMS Consulting LLC dated August 16, 2020, Dr. Reynolds wrote the following:

> This letter is in response to your letter dated 8/7/2020 requesting records review on Mr. Bryant. As you know, Mr. Brandt [sic] had a work-related injury to his right knee on April 3, 2019 when he slipped coming down some stairs and felt a pop. An MRI scan revealed a large intra-articular loose body. On May 28, 2019 I performed a right knee arthroscopy with removal of the loose body and chondroplasty of the medial femoral condyle. I have looked at his arthroscopy photos once again. These confirm a large, approximately 2 cm, loose body with a traumatic chondral defect in the weightbearing portion of the medial femoral condyle.
>
> On October 9, 2019 he was seen for routine follow-up. At that time he was doing well with range of motion from 0-120 degrees. He had no tenderness to palpation along his medial joint line and his ligaments are all stable. I released him at full, unrestricted duty and provided him with an

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session]."

impairment rating according to the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition.

In February 2020 Mr. Bryant requested a change of physician and establish care with Dr. Joel Smith at the Martin Knee Clinic in North Little Rock. Dr. Smith has recommended knee arthroplasty. A new MRI scan was obtained which I have personally reviewed.

Questions asked of me and answered are as follows:

1. Were arthritic changes present at time of initial injury?

   Yes, there were degenerative changes in the articular cartilage of the tibial plateau at the time of his original injury. There were no degenerative changes in the medial femoral condyle; however, there was a traumatic chondral injury resulting in the large loose body.

2. Based on file review and evaluation of radiology reviewed, within a reasonable degree of medical certainty, I do [sic—presumably the question asked was phrased "do you"] feel recommended surgery is related to work injury of 4/3/2019 or pre-existing condition?

   I reviewed an MRI scan of the right knee performed at Baptist Imaging Center on May 7, 2020. This MRI scan shows significant degenerative changes in the medial compartment with near complete loss of articular cartilage. There is a focal subchondral cyst within the weightbearing portion of the medial femoral condyle. This correlates to the area of his traumatic chondral injury seen on his arthroscopy photos in May 2019.

   I also reviewed his radiographs obtained on May 10, 2019. This was at his initial consultation with me. His joint space on the medial compartment measured 2.6 mm on the right knee. This is consistent with osteoarthritis which was existing at the time of his injury. Thus, his injury which occurred on the date stated above represented an acute exacerbation of a chronic underlying condition.

3. Within a reasonable degree of medical certainty, [do] I believe Mr. Bryant['s] symptoms, radiology review, and objective findings do or do not represent greater than 51% relatedness to the work injury of 4/3/2019?

   As stated above in question #2 it is my professional opinion that his injury that occurred on the date stated above represents an acute

> exacerbation of a chronic underlying condition. Given the fact that his symptoms had completely resolved in October 2019 it is my professional medical opinion that his acute exacerbation was appropriately treated with arthroscopic loose body removal and postoperative physical therapy. Thus, it is my professional medical opinion that his current symptoms and need for knee arthroplasty are LESS THAN 51% related to his injury which occurred at work on the date stated above. It is as likely as not that his arthritic condition would have progressed to the point where he required arthroplasty irrespective of his injury at work.

These statements are made with a reasonable degree of medical certainty based upon record review. No physical examination was performed.

On October 5, 2020, Claimant underwent a functional capacity evaluation. The evaluation reflects that he demonstrated the ability to work in at least the Light category. The evaluator wrote:

> RELIABILITY AND CONSISTENCY OF EFFORT
> Consistency of effort testing obtained during this evaluation indicate significant observational and evidence-based inconsistencies resulting in self-limiting behavior and sub-maximal effort. The results of this evaluation indicate that an unreliable effort was put forth, with 34 of 51 consistency measures within expected limits. Analysis of the data collected during this evaluation indicates that he did not put forth consistent effort. He also produced low and inconsistent strength results with isometric strength trials that also indicate inconsistent effort on his behalf. He also participated in horizontal strength change tests which are designed to determine if he was putting forth full and consistent effort. He failed all horizontal strength change tests given. There was also a failure to produce an appropriate result when comparing his isometric strength exhibited during other aspects of testing to his isometric strength when formally tested. Another inconsistency was his demonstrated inability to complete the knuckle to shoulder lifting test with an empty 10 lb. box. He was then told that the weight would be replaced with a different one, which he proceeded to complete all lifts with through the same range. The second weighed the same as the weight he had just demonstrated being unable to lift. This is not appropriate effort. His score of 60 on the McGill Pain Questionnaire is indicative of symptom magnification.

Dr. Smith wrote on October 7, 2020:

> To whom it may concern,
>
> I have reviewed the FCE findings for Dale Bryant done October 5, 2020. It shows that an unreliable effort was put forth. It shows he demonstrated an occasional lift/carry of up to 25 lbs. He also demonstrated the ability to perform lifting/carrying of up to 10 lbs on a frequent basis.
>
> Although the results indicate an unreliable effort, it did demonstrate that he could work light duty as described in the table Physical Demand Characteristics of Work.

Claimant's counsel wrote Dr. Smith on December 8, 2020, asking him the following: (1) "What injury did you treat Mr. Bryant for after the 4/03/2019 work related accident?" and (2) "Do you believe, within a reasonable degree of medical certainty, that Mr. Bryant's work-related injury of 4/3/2019 is 1% or greater a factor in his need for a partial knee replacement?" With respect to the first question, Smith responded: "Dr. Kirk Reynolds took care of him initially for a traumatic cartilage injury and loose body sustained from his work injury. He had removal of the loose body and is now having continued pain because of the injury." As for the second, the doctor wrote: "Yes, his cartilage injury is the reason for the need for a partial knee replacement."

Discussion. The parties have stipulated, and I have agreed, that Claimant suffered a compensable injury to his right knee on April 3, 2009–when he was using a vacuum cleaner on a stairway at work when he became entangled in an electrical cord, resulting in the knee twisting and popping. Respondents No. 1 covered his surgery by Dr. Reynolds, which consisted of, inter alia, an arthroscopic removal of a loose body and an arthroscopic chondroplasty of the medial femoral condyle. Claimant is asking

that I award him additional treatment at the expense of Respondents No. 1–with that treatment consisting of a partial right knee replacement.

As discussed above, Claimant testified at the hearing that the surgery did not help, and that he is still in pain. While the records reflect that Claimant did experience pain relief following the surgery, that relief was not long-lasting. I credit his testimony that he is still experiencing severe right knee pain. Visco-supplementation helped with the pain, but only for a short time.

Dr. Smith has opined that the reason that the partial right knee arthroscopy is needed is because of Claimant's "cartilage injury"; i.e., his stipulated work-related injury of April 3, 2019. The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examination medical opinions concerning causation:

> Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this

> evidence should pass muster. *See, Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

I credit Dr. Smith's causation opinion concerning Claimant's right knee condition, based upon my review of the evidence.

In so doing, I am not unaware of the opinion of Dr. Reynolds. He was asked to opine whether Claimant's "symptoms, radiology review, and objective findings do or do not represent **greater than 51%** relatedness to the work injury of 4/3/2019." (Emphasis added) The language in bold represents the standard articulated as "major cause." This standard means more than fifty percent (50%) of the cause, and has to be established by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(14) (Repl. 2012). But this is <u>not</u> the standard to be applied to determine whether Claimant is entitled to additional treatment. Instead, Claimant need only prove that the proposed surgery is "causally related" to his compensable injury of April 3, 2019. *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004). *See also Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. Reynolds was of the opinion that Claimant's present symptoms and need for surgery "are LESS THAN 51% related to his injury which occurred at work on the date stated above." This opinion does not comport with the law. He added that "[i]t is as likely as not that [Claimant's} condition would have progressed to the point where he required arthroplasty irrespective of his injury at work." Based on my review of the evidence, I

cannot, and do not, credit this. Reynolds also wrote that while the work-related incident on the stairs caused "an acute exacerbation of a chronic underlying condition" in the right knee, Claimant's right knee symptoms "had completely resolved in October 2019"—when the doctor found him to be at maximum medical improvement. But the records in evidence reflect that the day that the doctor released him, October 9, 2019, Claimant was "complaining of anterior right knee pain that is constantly sharp." Again, for the foregoing reasons, I do not credit Dr. Reynolds' opinion.

However, to the extent that Claimant's need for treatment is causally related to the accident aggravating or exacerbating a pre-existing condition in his right knee, such is hardly fatal to his case. As the Arkansas Court of Appeals stated in *Tenner*, *supra*, "[a] pre-existing medical condition does not defeat a claim if the compensable injury aggravated, accelerated, or combined with the pre-existing condition to produce the disability for which workers' compensation benefits are sought . . . [s]tated differently, an employer takes an employee as it finds her." (Citations omitted). *See also St. Vincent Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). As Dr. Reynolds acknowledged, the incident on the stairs on April 3, 2019 "represents an acute exacerbation of a chronic underlying condition." Claimant's present need for treatment is causally related to this.

As the Arkansas Court of Appeals has held, a claimant may be entitled to additional treatment even after the healing period has ended, if said treatment is geared toward management of the injury. *See Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004); *Artex Hydrophonics, Inc. v. Pippin*, 8 Ark. App. 200, 649

S.W.2d 845 (1983). Such services can include those for the purpose of diagnosing the nature and extent of the compensable injury; reducing or alleviating symptoms resulting from the compensable injury; maintaining the level of healing achieved; or preventing 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); *Artex*, *supra*. A claimant is not required to furnish objective medical evidence of his continued need for medical treatment. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000). The evidence shows that the recommended partial knee replacement falls within this standard.

In sum, after consideration of the evidence, I find that Claimant has proven by a preponderance of the evidence that the surgery that he is seeking from Dr. Smith on his right knee is reasonable, necessary and related to his stipulated compensable injury. He has established his entitlement to this procedure, plus any treatment related thereto, at the expense of Respondents No. 1.

CONCLUSION AND AWARD

Respondents No. 1 are hereby directed to pay/furnish benefits in accordance with the findings of fact and conclusions of law set forth above. All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

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Hon. O. Milton Fine II
Chief Administrative Law Judge