

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H003130

MARGARET BURRUS, Employee	CLAIMANT
PAIN TREATMENT CENTERS OF AMERICA, Employer	RESPONDENT
AMERICAN CASUALTY CO. OF READING, PA/BROADSPIRE, Carrier/TPA	RESPONDENT

OPINION FILED APRIL 21, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney, Springdale, Arkansas.

Respondents represented by LAUREN A. SPENCER, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On April 7, 2021, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on February 24, 2021 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 among the parties on March 2, 2020.
3. The claimant sustained a compensable injury to her right knee and left hand on March 2, 2020.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$394.00 for total disability benefits and \$296.00 for permanent partial disability benefits.

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

1. Additional medical; including surgery on claimant's right knee as recommended by Dr. MacLeod.

2. Temporary total disability benefits from January 15, 2021 through a date yet to be determined.

3. Attorney's fee.

The claimant contends that as a result of her compensable injury Dr. MacLeod has ordered arthroscopic surgery for claimant's right knee. Claimant further contends that she is entitled to temporary total disability benefits for a five week period beginning January 15, 2021. Claimant's attorney is entitled to a controverted attorney's fee.

The respondents contend the objective and measurable physical findings do not support the claimant's request for arthroscopic knee surgery and temporary total disability benefits.

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 a pre-hearing conference conducted

on February 24, 2021 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 she is entitled to additional medical treatment as recommended by Dr. MacLeod. This includes surgery which Dr. MacLeod performed on claimant's right knee.

3. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits from January 15, 2021 through February 21, 2021.

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

#### FACTUAL BACKGROUND

The claimant began working for the respondent in October 2017 as a UDT (urine drug test) collector. Claimant was responsible for getting a patient from the waiting room, having them empty their pockets, having them go into the bathroom and standing outside the door while a urine sample was given. Claimant would then take the specimen, register the temperature, and take it to a refrigerator. She testified that she worked ten hours per day Monday through Thursday.

Claimant also testified that she had no problems with her right knee prior to March 2, 2020. On that date, the claimant was walking to the lab area and as she entered the lab, she tripped over a co-employee's foot. This resulted in an admittedly compensable injury to claimant's right knee and left hand.

Claimant reported the injury and was referred by respondent to MedExpress for medical treatment. On March 2, 2020, swelling of claimant's knee was noted and she

was diagnosed as suffering from a contusion. Claimant was instructed to apply ice, take Ibuprofen, and other medications. Claimant returned to MedExpress on March 20, 2020, and indicated that her knee pain had worsened. No swelling was present at that time and claimant was instructed to elevate her knee as much and as high as possible. Claimant was also referred for an evaluation at Ozark Orthopaedics.

On April 8, 2020, claimant was evaluated by Dr. Robert MacLeod at Ozark Orthopaedics. He noted that claimant's right knee had some small effusion. Dr. MacLeod noted that claimant suffered from a right MCL strain with a possible meniscus tear. He ordered an MRI scan of the claimant's right knee and gave claimant a knee brace to wear. Claimant underwent the MRI scan on April 13, 2020, and returned to Dr. MacLeod on May 8, 2020. In his report of that date, Dr. MacLeod noted that claimant had a medial meniscus tear as well as chondromalacia from her work-related accident. Dr. MacLeod gave claimant an injection and indicated that if she failed to respond to conservative treatment an arthroscopic intervention might become necessary. Dr. MacLeod also ordered physical therapy which was denied at that time by the respondent. Based on the respondent's denial, claimant did not return to Dr. MacLeod again until November 20, 2020. Dr. MacLeod noted that the prior injection had helped claimant's conditions but that her symptoms had recurred. Dr. MacLeod gave claimant another injection and again ordered physical therapy and prescribed medication. He also noted that claimant could continue full duty work with the use of a brace.

Thereafter, claimant underwent physical therapy and returned to Dr. MacLeod on January 15, 2021. Dr. MacLeod noted that claimant had minimal relief from the conservative treatment and recommended that she undergo an arthroscopic procedure.

Dr. MacLeod performed surgery on claimant's right knee on February 1, 2021. His operative report contains the following post-operative diagnoses:

Right knee chondromalacia, right knee medial meniscus tear with lateral meniscus tear.

Respondent denied liability for the surgery performed by Dr. MacLeod and as a result claimant filed this claim. She requests payment for the additional medical treatment, including surgery, provided by Dr. MacLeod as well as payment of temporary total disability benefits and a controverted attorney fee.

#### ADJUDICATION

Claimant contends that she is entitled to additional medical treatment including the surgery performed by Dr. MacLeod. 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). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

In response to claimant's contention that the surgery performed by Dr. MacLeod is reasonable and necessary, respondents contend that there are no objective findings supporting claimant's request for an arthroscopic knee surgery. First, I note that a claimant who has sustained a compensable injury is not required to furnish objective medical evidence of her need for continued medical treatment. *Arkansas Health Center*

*v. Burnett*, 218 Ark. App. 427, 558 S.W. 3d 408. In addition, there are objective findings present in this case. Dr. MacLeod ordered an MRI scan which revealed a medial meniscus tear. This finding was confirmed according to his operative report of February 1, 2021, which indicates that claimant had a right knee medial meniscus tear as well as a lateral meniscus tear.

Respondent also relies upon the opinion of Dr. Owen Kelly. Dr. Kelly authored a report dated October 12, 2020 in which he opined that surgery was not necessary for claimant's work-related injury.

I find that the opinion of Dr. Kelly is entitled to little weight when compared to the opinion of Dr. MacLeod that claimant's knee issues are related to her work injury. First, Dr. MacLeod has been claimant's authorized treating physician since her referral to him by MedExpress in April 2020. Dr. MacLeod has evaluated the claimant on a number of occasions and performed surgery on claimant's meniscus tear. On the other hand, Dr. Kelly's opinion was written without consideration of the findings during surgery and is not based upon any physical examination of the claimant, but instead is based solely upon his review of medical records. In short, I find that the opinion of Dr. MacLeod is entitled to greater weight.

Based upon the opinion of Dr. MacLeod as well as the totality of the evidence in this case, I find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable right knee injury. This includes the surgery performed by Dr. MacLeod on February 1, 2021.

I also find that claimant has met her burden of proving by a preponderance of the evidence that she is entitled to temporary total disability benefits beginning January 15,

2021, and continuing through February 21, 2021. Claimant's injury to her right knee is a scheduled injury. A claimant who suffers a scheduled injury is entitled to payment of 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). Here, at the time of claimant's visit with Dr. MacLeod on January 15, 2021, he took claimant off work until after her surgery. Dr. MacLeod did not release claimant to return to work at desk duty until February 22, 2021. Accordingly, based upon the medical reports of Dr. MacLeod, I find that claimant is entitled to temporary total disability benefits beginning January 15, 2021 and continuing through February 21, 2021.

#### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable right knee injury. This includes surgery performed by Dr. MacLeod. In addition, claimant is entitled to temporary total disability benefits beginning January 15, 2021 and continuing through February 21, 2021.

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.

Respondent is responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$390.05.

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

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE