BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G902239

VICKY EMBERTON, EMPLOYEE **CLAIMANT**

CENTRAL ARK. DEV. COUNCIL, INC.,
EMPLOYER **RESPONDENT NO. 1**

ATA WORKERS' COMPENSATION TRUST/
RISK MG'T RESOURCES, INC.,
INSURANCE CARRIER/TPA **RESPONDENT NO. 1**

STATE OF ARKANSAS,
DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND **RESPONDENT NO. 2**

OPINION AND ORDER FILED MARCH 30, 2021

Hearing conducted before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens, on December 30, 2020.

The claimant was represented by the Honorable Whitney B. James, Rainwater Holt & Sexton, Little Rock, Pulaski County, Arkansas.

Respondent No. 1 was represented by the Honorable Jarrod Parrish, Worley, Wood & Parrish, P.A., Little Rock, Pulaski County, Arkansas.

Respondent No. 2, represented by the Honorable Christy L. King, Little Rock, Pulaski County, Arkansas.

INTRODUCTION

In the Amended Prehearing Order filed October 21, 2020, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including March 29, 2019, when the claimant sustained a compensable injury to her left knee.

3. The claimant's average weekly wage (AWW) is $909.66, entitling her to weekly compensation rates of $606.00 for temporary total disability (TTD), and $455.00 for permanent partial disability (PPD) benefits.

4. Respondent No. 1 initially accepted this claim as "medical only," paid some medical benefits, and for the claimant's one (1)-time-only change of physician (COP) appointment, and thereafter controverted the COP's recommendation for additional medical treatment.

5. The parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 3-4). Pursuant to the parties' mutual agreement the issues litigated at the hearing were:

1. Whether the surgery the claimant's COP has recommended for her left knee is related to, and reasonably necessary for, treatment of her March 29, 2019 compensable injury, or is necessitated by an independent intervening cause.

2. Whether the claimant is entitled to TTD benefits beginning and through dates yet to be determined as a result of the recommended surgery.

3. Whether the claimant's attorney is entitled to a controverted fee on these facts.

4. The parties specifically reserve any and all other issues for future litigation and/or determination.

(Comms'n Ex. 1 at 2; T. 4-5).

The claimant, a bus driver for Central Arkansas Development Council, Inc. (CADA), contends that on March 29, 2019 she was helping a passenger with his walker when she stepped down from the bus onto unlevel ground, injuring her left knee. She sought medical treatment the next day, and underwent an MRI on April 4, 2019 that revealed a complex meniscus tear. She was referred to Dr. Charles Pearce who opined her injury was an exacerbation of pre-existing arthritis. Dr. Pearce placed the claimant at maximum medical improvement (MMI) on May 14, 2019. The claimant requested and obtained a COP to Dr. Joel Smith on October 29, 2019. Dr. Smith has

opined the claimant's lateral meniscus tear was acute, the result of her specific incident injury on March 29, 2019, and he has recommended an arthroscopy of the left knee with partial lateral meniscectomy. Respondent No. 1 has denied the surgery. The claimant contends she is entitled to medical benefits, TTD benefits in an amount yet to be determined, as well as a controverted attorney's fee. She hereby specifically reserves all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 2-3; T. 4-5).

Respondent No. 1 contends it has paid all appropriate medical and indemnity benefits to which the claimant is entitled. Respondent No. 1 contends the claimant's need for medical treatment, if any, is associated with a pre-existing and underlying condition(s), and not her compensable injury. Alternatively, Respondent No. 1 contends the claimant suffered a second injury motor vehicle accident on June 23, 2020, which may well constitute an independent intervening cause necessitating her current need, if any, for medical treatment. (Comms'n Ex. 1 at 3; T. 4-5).

Respondent No. 2 waives its right to appear at the hearing and defers to the outcome of the litigation. (Comms'n Ex. 1 at 3).

STATEMENT OF THE CASE

The claimant, Ms. Vicky Diane Emberton (the claimant), was 60 years old at the time of the hearing, and 58 years old on March 29, 2019, the day of her compensable left knee injury. The claimant testified she has been employed with CADA two (2) years as a bus driver. In addition to driving clients to and from their destinations, her job duties included helping them on and off the bus if they required assistance. (T. 8-9).

On March 29, 2019, the day of her compensable left knee injury, the claimant stepped out of the bus, left leg first, to help a client with his walker. Her left leg and foot landed awkwardly on unlevel ground, and she immediately and suddenly felt and heard an audible "pop" in her left knee. She limped over to the client, helped him with his walker, and got back on the bus. When she got on the bus, she looked at her ankle and noticed "it was swelled, and my knee hurt real bad." (T. 11; 10-11; 20-21). Her employer sent her for medical treatment the following morning, March 30, 2019. The Baptist Health/Malvern medical record from this visit reflects the claimant told the attending physician she had stepped off the bus while helping a customer when she "felt a pop" and then noticed swelling in her left knee, which the attending physician noted was present at the time of his physical examination. (Claimant's Exhibit 1 at 1).

X-rays taken on this initial March 30, 2019 examination revealed no fracture, but arthritic changes in the claimant's left knee involving primarily the lateral and patellofemoral joint compartments, "along with chondrocalcinosis, suggesting CPPD." CPPD is the acronym for Calcium Pyrophosphate Deposition Disease, also known as "CPP crystal arthritis," and "pseudogout" (CPPD, or pseudogout). CPPD is a type of arthritis which typically presents acutely (meaning sudden onset from a specific precipitating incident generally identifiable by time and place) resulting in pain and swelling. CCPD is a type of arthritis where calcium pyrophosphate crystals form in the synovial fluid of a joint, most commonly the knee, thus the "pseudogout" moniker. Physicians generally treat this relatively rare form of arthritis with therapy protocols used for acute gouty arthritis which are aimed at reducing painful swelling, and not surgery. Common treatment strategies include intraarticular glucocorticoids; oral colchicine; nonsteroidal anti-

inflammatory drugs (NSAIDS); systemic interleukin-1 Beta inhibitors; low-to-moderate doses of prednisone; and even hydroxychloroquine, and methotrexate, the latter of which is often used in treating rheumatoid arthritis. (*See generally,* Respondents' Exhibit 2 at 1-22).

The claimant saw a couple of other physicians to whom she gave the identical history she gave the attending physician at Baptist Health/Malvern of an acute left knee injury while stepping off the CADA bus at work which resulted in an audible popping sound, as well as immediate, sudden pain and swelling in her left knee. Dr. Michael Higginbotham, ordered an MRI of the claimant's left knee, which she underwent at Touchstone Imaging in Hot Springs on April 4, 2019. In addition to tricompartmental osteoarthritis with severe patellofemoral chondromalacia (cartilage loss), and suprapatellar joint effusion, this MRI revealed a "[c]omplex tear of the junction of the posterior horn and body of the lateral meniscus." (CX1 at 13; 11-13). After discussing these MRI findings with the claimant, Dr. Higginbotham referred her to an orthopedic surgeon, Dr. Charles Pearce at the University of Arkansas for Medical Sciences (UAMS). (CX1 at 14-16) (Bracketed material added).

On April 16, 2019 Dr. Pearce examined the claimant and reviewed her diagnostic test results. After noting the claimant "had been told she had a torn meniscus" (and that she had a history of a dislocated patella at a [much] younger age), Dr. Pearce opined "within a reasonable degree of medical certainty" the March 29, 2019 work incident "exacerbated" the claimant's underlying preexisting arthritic condition(s) of her left knee. He said the claimant should consider using a cane; that she could return to sedentary duty at work with no driving; and she should start physical therapy (PT) on her left knee and follow up with him in four (4) weeks. When she returned

to see him on May 14, 2019, the claimant still had severe pain in her left knee. Still, Dr. Pearce opined she had reached MMI, and he released her to return to full duty work with no restrictions, and zero percent (0%) permanent anatomical impairment. It should be noted the claimant also gave a consistent injury history to Dr. Pearce. (CX1 at 16-23; Respondents' Exhibit 1 at 1-22).

Because she was still in severe pain the claimant requested, and the Commission granted by order filed October 16, 2019, her one (1)-time-only COP to Dr. Joel Smith, an orthopedic surgeon associated with the Martin Knee & Sports Clinic in North Little Rock. (T. 17-18; Claimant's Exhibit 2 at 1-2). The claimant first saw Dr. Smith on October 29, 2019 and, as she had done with all the other physicians who examined her and as she testified at the hearing, the claimant gave the same consistent, identical history of a specific injury which occurred on March 29, 2019. After reviewing the claimant's x-rays and MRI results, Dr. Smith confirmed her previous diagnosis of tricompartmental chondromalacia and a "complex tear of the lateral meniscus" in her left knee. In the "Impression" section of his report Dr. Smith stated:

> She clearly has significant arthritic changes present about the knee that are preexisting. However, prior to the injury, she was functioning well. She heard a loud "pop" that was reportedly heard by those around her. She now has lateral sided pain and a complex lateral meniscus tear that was from that injury.

(CX1 at 26; 24-26; T11-17). Dr. Smith recommended an arthroscopy with a partial lateral meniscectomy. (CX1 at 26). Respondent No. 1 paid for the one (1)-time-only COP visit, but denied the surgery as not being related to, nor reasonably necessary medical treatment for, the claimant's compensable March 29, 2019 left knee injury.

On cross-examination the claimant admitted she was involved in a motor vehicle accident

(MVA) on June 23, 2020, when a diesel truck rear-ended her vehicle at a railroad crossing, knocking her vehicle 50 to 60 feet further down the road. (T.26). After this MVA the claimant went to the emergency room (ER) to get checked out, as she was having a little bit more pain in her left knee because the MVA "jarred" her. (T. 26). The claimant also admitted she told the ER physician she had knee pain "for years" which she explained was just common every day pain which was not debilitating, and for which she had never had to seek medical treatment. (T. 26-27).

The claimant candidly explained further to the ALJ that while she had experienced some knee pain in the past, the pain she experienced after the March 29, 2019 work injury was different in that "there for a while it was just really hard to walk without just excruciating pain", and that she had never experienced any pain like that in the past. (T. 31; 35). The claimant said she complained about the left knee pain to her boss every day after the March 2019 work incident, and her boss made a written record of her complaints. (T. 31). The claimant walked with a noticeable limp from the counsel table to the witness stand. (T. 32; 30-36).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2020 Lexis Supplement). The claimant has the burden of proving by a preponderance of the evidence she is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). ***Ark. Code Ann.*** Section 11-9-704(c)(3) (2020 Lexis Supp.) states that the ALJ, the Commission, and the courts

"shall strictly construe" the Act, which also requires them to read and construe the Act in its entirety, and to harmonize its provisions when necessary. *Farmers' Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d899 (Ark. App. 2002). In determining whether the claimant has met her burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party**. *Ark. Code Ann***. § 11-9-704(c)(4) (2020 Lexis Supp.); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover,* 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's,* 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002). The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Williams v. Pro Staff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible given the totality

of the credible evidence of record. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

The claimant has met her burden of proof in demonstrating Dr. Smith's proposed arthroscopic left lateral meniscectomy surgery is related to, and constitutes reasonably necessary treatment for, her admittedly compensable left knee injury of March 29, 2021.

Ark. Code Ann. § 11-9-508(a)(1) (2020 Lexis Supp.) requires an employer to promptly provide an injured worker with, among other modalities, such medical treatment "as may be reasonably necessary in connection with the injury received by the employee." The burden of proof is on the claimant to prove the additional medical treatment she requests is reasonably necessary for treatment of her compensable injury. *Lankford v. Crossland Constr. Co*., 2011 Ark. App. 416, 384 S.W.3d 561 (Ark. App. 2011). What constitutes reasonably necessary medical treatment is a question of fact for the Commission and turns on the sufficiency of the evidence in each specific case. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (Ark. App. 1984); *Gansky v. Hi-Tech Eng'g*, 325 Ark. 163, 924 S.W.2d 790 (1996).

While injured employees must prove by a preponderance of the evidence that medical services are related to the compensable injury and reasonably necessary for treatment of the injury, Arkansas law is well-settled that such services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. ***Ark. Code Ann***. § 11-9-705(a)(3); *Jordan v. Tyson Foods, Inc*., 51 Ark. App. 100, 911 S.W.2d 593 (Ark. App. 1995).

Moreover, our court of appeals has noted that even if the healing period has ended, a claimant

may be entitled to ongoing medical treatment if the treatment is geared toward management of problems emanating from her compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark App. 230; 184 S.W. 3d 31, (Ark. App. 2004). The Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. *Maynard v. Belden Wire & Cable Co.*, Arkansas Workers' Compensation Commission (AWCC) Claim No. E502002 (Full Commission Opinion filed April 28, 1998); and *Billy Chronister v. Lavaca Vault*, AWCC Claim No. 704562 (Full Commission Opinion filed June 20, 1991). A claimant is not required to support the alleged need for continued medical treatment with objective findings. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (Ark. App. 1997).

Reasonably necessary medical services include those necessary to reduce or alleviate symptoms resulting from the compensable injury. ***Ark. Code Ann***. § 11-9-705(a)(3); and *Jordan*, *supra*. Accordingly, this Commission has found that a treating physician's referral for pain management is reasonably necessary in connection with the claimant's compensable injury. *Stewart v. Gaither's Appliance*, AWCC Claim No. F403161 (Full Commission Opinion filed April 24, 2007). Also, reasonably necessary medical services include those necessary to reduce or alleviate symptoms resulting from the compensable injury. ***Ark. Code Ann***. § 11-9-705(a)(3); and *Jordan*, *supra*. Accordingly, this Commission has found that a treating physician's referral for pain management is reasonably necessary in connection with the claimant's compensable injury. *Stewart v. Gaither's Appliance*, AWCC Claim No. F403161 (Full Commission Opinion filed April 24, 2007).

It is a black letter principle of workers' compensation law that an employer takes the employee as he finds him; and an employment-related incident that aggravates a preexisting condition(s) is (are) compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (Ark. App. 2003). Stated another way, a preexisting disease or infirmity does not disqualify a claim if the work-related incident aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which the claimant seeks benefits. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (Ark. App. 2003). The aggravation of a preexisting, otherwise non-compensable condition by a compensable injury is itself compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (Ark. App. 1999). An aggravation is a *new injury* resulting from an independent incident. *Crudup v. Regal Ware, Inc*., 341 Ark. 804, 20 S.W.3d 900 (Ark. App. 2000) (Emphasis added). Of course, since it is a new injury resulting from an independent cause, any alleged aggravation of a preexisting condition must meet the Act's definition of a "compensable injury" in order for the claimant to prove compensability. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (Ark. App. 1996).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork Grp., Inc*., 2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010). Where the only objective findings present are consistent with prior objective findings *or*

consistent with a long-term degenerative condition rather than an acute injury, this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury. Vaughn, 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require "new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition"); *Barber, supra* (affirming the Commission's denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*) (Emphases added).

This case represents the classic example of a specific incident injury identifiable by time and place of occurrence that aggravated the claimant's underlying, preexisting arthritic condition and resulted in an "acute" injury. The preponderance of the evidence herein demonstrates the admitted March 29, 2019 compensable work incident aggravated the claimant's previously asymptomatic, non-debilitating underlying preexisting arthritic condition in her left knee and resulted in an "acute" complex tear of the lateral meniscus of her left knee. Based on the applicable law as applied to the facts of this case, I find the claimant has met her burden of proof in demonstrating the arthroscopic left lateral meniscectomy surgery Dr. Joel Smith has recommended is both related to, and constitutes reasonably necessary treatment for, her compensable left knee injury of March 29, 2019. The claimant is entitled to undergo the arthroscopic surgery Dr. Joel Smith has recommended, and to receive TTD benefits from the date of the surgery to a date yet to be determined when she reaches MMI.

The preponderance of the medical and other evidence of record demonstrates the claimant

tore her left lateral meniscus as a result of the specific incident of March 29, 2019, when she was stepping off the bus to help a client and she felt and heard an audible, painful "pop" in her left knee. While it remains to be seen what effect, if any, the March 29, 2019 compensable work incident had on the underlying CPPD/arthritic condition of the claimant's left knee, for the following reasons I find the credible medical and other evidence of record demonstrates the claimant more likely than not tore her left lateral meniscus in this admittedly compensable incident; and that Dr. Smith's proposed arthroscopic procedure to repair the complex tear of the lateral meniscus in her left knee is related to, and constitutes reasonably necessary treatment for, her admittedly compensable left knee injury of March 29, 2019.

First, I found the claimant to be a pleasant, no-nonsense, articulate, and highly credible witness. Despite her compensable knee injury, she has continued to work through her pain. She candidly admitted she had experienced knee pain in the past, but said it was simply soreness, and she explained the pain she experienced immediately after and since the March 29, 2019 specific incident was "excruciating" and different in character and intensity than any normal aches and pains she experienced in the past. The claimant immediately reported her injury to her employer and sought treatment at her employer's behest the very next day after the incident, March 30, 2019. The medical record reveals the claimant has been consistent in telling all the physicians who have evaluated her how the work incident occurred. The claimant's description of her accidental, specific incident work injury has been consistent throughout this claim and is consistent with a torn meniscus.

Second, the claimant credibly testified she had never been diagnosed with CPPD in the past,

and she had no idea she had this preexisting condition until she underwent the X-ray soon after her accidental, admittedly compensable injury of March 29, 2019. (T. 30-37). Moreover, there exists no medical evidence whatsoever the claimant's torn left lateral meniscus, which Dr. Higginbotham described as an "acute meniscal tear" (CX1 at 15) – and which in a case such as this one, the medical term "acute" is *synonymous* with the corresponding workers' compensation legal phrase of art "accidental injury caused by a specific incident identifiable by time and place of occurrence" – was caused by either the underlying CPPD arthritic condition, or any incident other than the March 29, 2019 compensable accidental, specific incident work injury. Indeed, the April 4, 2019 MRI, performed just five (5) days after the March 29, 2019 work incident, revealed the claimant had a "complex tear of the junction of the posterior horn and body lateral meniscus with extrusion of the lateral meniscus body." (CX1 at 12).

There existS no medical records whatsoever either before or after the March 29, 2019 injury date indicating the torn meniscus in the claimant's left knee was caused by any other incident. While Respondent No. 1 seeks to tie the claimant's left knee injury to the MVA in which she was involved in June 2020, there exists no medical or other evidence in the record demonstrating this caused the complex tear in her left knee lateral meniscus on which Dr. Smith proposes to perform surgery. In fact, the torn meniscus was discovered and diagnosed over one (1) year *before* the June 2020 MVA. Consequently, under these circumstances, it would constitute sheer speculation and conjecture to find the complex tear in the claimant's lateral meniscus of her left knee was caused by anything other than the March 29, 2019 compensable specific incident work injury. Just as speculation and conjecture will not support a claim for benefits, they also may not support the

denial of a claim for benefits – and this is especially true where there exists a preponderance of medical and other credible evidence in the claimant's favor. *See, Dena, supra.*

Third, it is significant to note Respondent No. 1 initially accepted the claimant's March 29, 2019 injury as a compensable "medical only" claim. They paid for all the claimant's medical treatment – including the April 4, 2019 MRI which revealed the complex tear in the claimant's left knee lateral meniscus. Respondent No. 1 also paid for the claimant's first visit to her COP orthopedic surgeon, Dr. Joel Smith. It was only when Dr. Smith recommended the arthroscopic surgery to repair the claimant's "acute" tear in the left knee lateral meniscus that Respondent No. 1 denied the claimant's request for additional medical treatment, i.e., Dr. Smith's proposed arthroscopic surgery.

Having initially accepted the claimant's accidental, specific incident left knee injury as compensable; and having obtained the contemporaneous April 4, 2019 MRI results which revealed the claimant had a complex tear in the lateral meniscus of her left knee that was "acute" in nature (i.e., the result of an accidental, specific incident injury identifiable by time and place of occurrence), Respondent No. 1 cannot now credibly deny the claimant's request for additional medical treatment for her admittedly compensable left knee injury simply because her injury has turned out to be more severe than – apparently – initially anticipated.

Fourth, based on the specific facts of this case, I find that Dr. Higginbotham's opinion the complex tear of the lateral meniscus in the claimant's left knee was "acute" in nature; and the COP physician, Dr. Joel Smith's, opinion the claimant requires arthroscopic surgery on her left knee because of the complex tear in her lateral meniscus which occurred as a result of the March 29,

2019 compensable injury to be significantly more credible than Dr. Pearce's opinion she reached MMI from her admittedly compensable March 29, 2019 left knee injury on May 14, 2019, and was able to return to work without any restrictions or permanent anatomical impairment. (CX1 at 24-26). Dr. Pearce opined the claimant had "left knee pain" caused simply as a result of the "exacerbation of her preexisting arthritis", and that her left torn lateral meniscus was "a long-standing problem and not an acute tear"; however, I do not find his opinion persuasive based on the credible medical and other evidence of record. (CX1 at 14-15; 1-15; and RX1 at 1-11; CX1 at 16-19).

My opinion in this regard is based on the fact the radiologist who interpreted the April 4, 2019 MRI report, Dr. Higginbotham, and Dr. Smith all indicate the claimant's lateral meniscus tear in her left knee was "acute", and not "chronic" in nature. My opinion is also based on the claimant's *unrebutted testimony* she had never experienced or been treated for any problem(s) in her left knee, debilitating or otherwise, before the March 29, 2019 specific incident compensable injury, nor had she had any significant problem(s) with her left knee before the date of the compensable injury. The medical record is completely devoid of any medical records indicating the claimant had even been treated for a left knee pain/problem(s) before the March 29, 2019 compensable left knee injury. Indeed, Dr. Smith himself stated when he examined the claimant, she reported to him she had been "functioning well" before the March 29, 2019 compensable work injury. And again, based on her demeanor, eye contact, manner of speaking, and no-nonsense candor when she testified at the subject hearing, I found the claimant to be a highly credible witness.

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

2. The stipulations contained in the Amended Prehearing Order filed October 21, 2019 hereby are accepted as facts.

3. The claimant has met her burden of proof in demonstrating her specific incident accidental left knee injury of March 29, 2019, which Respondent No. 1 accepted as compensable, resulted in an "acute" and "complex lateral meniscus tear" in her left knee that aggravated her underlying preexisting arthritic CCPD/pseudogout and chondromalacia/chondrocalcinosis conditions so as to necessitate the arthroscopic left knee surgery Dr. Joel Smith has recommended. Therefore, the surgery Dr. Smith has recommended is related to, and constitutes reasonably necessary treatment for, the claimant's March 29, 2019 compensable left knee injury.

4. There exists insufficient testimonial, documentary, and/or medical evidence demonstrating the MVA in which the claimant was involved on June 23, 2020 constitutes an independent, intervening cause so as to relieve Respondent No. 1 for liability for the arthroscopic left lateral meniscectomy Dr. Smith has recommended, and any and all indemnity benefits associated with the surgery.

5. The claimant shall be entitled to TTD benefits from the date of the left knee arthroscopic surgery until the date her treating orthopedic surgeon deems, she has reached MMI following the surgery. *See, Ark. Hwy. & Trans. Dep't v. McWilliams,* 41 Ark. App 1, 846 S.W.2d 670 (1993).

6. The claimant's attorney is entitled to a fee on any and all TTD benefits to which the claimant is entitled as a result of the March 29, 2019 compensable injury.

7. The issue of the claimant's entitled to a permanent anatomical impairment rating to her left knee as a result of the March 29, 2019 compensable left knee injury, any PPD benefits associated with any such rating, and all other issues are reserved for future litigation and/or determination.

If they have not already done so, Respondent No. 1 shall pay the court reporter's invoice within ten (10) days of its receipt of this opinion and order.

IT IS SO ORDERED.

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Mike Pickens
Administrative Law Judge