BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NOS. H205022 & H407732

BARKLEY EXUM, EMPLOYEE **CLAIMANT**

CITY OF JONESBORO,
SELF-INSURED EMPLOYER **RESPONDENT**

ARK. MUN. LEAGUE,
THIRD-PARTY ADM'R **RESPONDENT**

OPINION FILED JULY 31, 2026

Hearing before Chief Administrative Law Judge O. Milton Fine II on May 22, 2026, in Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Mark Alan Peoples, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Mary K. Edwards, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 22, 2026, the above-captioned claims were heard in Jonesboro, Arkansas. A prehearing conference took place on March 30, 2026. 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.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. They are the following, which I accept:

1. The Arkansas Workers' Compensation Commission (the "Commission") has jurisdiction over these claims.

2. The employee/self-insured employer/third-party administrator relationship existed among the parties on July 6, 2022, and October 19, 2024, when Claimant sustained compensable injuries to his right knee by specific incident.

3. Respondents have accepted these claims and paid medical and temporary total disability benefits pursuant thereto.

4. Claimant's average weekly wage entitles him to the maximum compensation rates.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1. After the amendment of Issue No. 2 to add date parameters, the following were litigated:

1. Whether Claimant is entitled to additional medical treatment of his stipulated compensable right knee injuries.

2. Whether Claimant is entitled to additional temporary total disability benefits from October 8, 2025, through January 2, 2026.

3. Whether Claimant is entitled to a controverted attorney's fee.

All other issues have been reserved.

Contentions

The respective contentions of the parties read as follows:

Claimant:

1. Claimant contends: (a) that he is entitled to additional temporary total disability benefits from the date of suspension until a date in the future; (b) that he is entitled to additional medical treatment; and (c) his attorney is entitled to a controverted fee on all indemnity benefits awarded herein.

Respondents:

1. Respondents contend that Claimant sustained a right knee injury on October 19, 2024, when he was participating in a physical fitness test, missing a step while climbing. He initially injured his right knee on July 6, 2022, when he fell through the floor of a house, responding to a call. This was the subject of a prior claim, H205022. Following the October 19, 2024, injury, Claimant saw Dr. Spencer Guinn for medical treatment. Dr. Guinn's reports mention that Claimant's symptoms for his right knee date back to the first fall in 2022. Guinn performed a right knee arthroscopy with debridement on December 31, 2024. Claimant participated in physical therapy following surgery. Respondents paid for Dr. Guinn's treatment.

2. Following a change of physician, Claimant saw Dr. Christopher Arnold on May 20, 2025. Arnold immediately recommended surgery in the form of a cartilage restoration. Claimant received a second opinion from Dr. William Hurst at Dickson Orthopedics, who did not feel surgery was warranted. On July 23, 2025, Hurst placed Claimant at maximum medical

improvement. And returned him to work at full duty. It was recommended that he can an independent medical evaluation; and Respondents sent him to see Dr. Lawrence O'Malley in Little Rock. O'Malley also did not feel that the surgery was warranted, and that Claimant's subjective complaints were not supported by the medical evidence. He recommended that Claimant undergo a functional capacity evaluation and an injection. The evaluation was completed on September 22, 2025; it was reliable and showed that Claimant could return to work in the Heavy classification. Dr. O'Malley returned Claimant to full duty, without restrictions, on October 6, 2025. Respondents did not pay for further medical treatment to Dr. Arnold after the change-of-physician visit. Claimant, however, continued to see Arnold for treatment and underwent the right knee chondroplasty on November 3, 2025.

3. Respondents contend that Dr. Arnold's surgery recommendation was not reasonable and necessary based on the opinions of Drs. Hurst and O'Malley. Therefore, Respondents should not be responsible for this treatment. Additionally, in Dr, Arnold's report of May 20, 2025, he was unable to determine whether Claimant's symptoms were related to the initial injury in 2022 or the more recent 2024 injury. Respondents thus also contend that Claimant cannot prove that the surgery recommended by Dr. Arnold is related to the October 19, 2024, compensable right knee injury.

4. Regarding temporary total disability benefits, Claimant worked from the date of injury until November 7, 2024, when Dr. Guinn took him off work. Respondents paid temporary total disability benefits from November 7, 2024, through November 26, 2024. Respondent City of Jonesboro provided light duty from November 27, 2024, through December 30, 2024. Claimant had surgery by Dr. Guinn on December 31, 2024. Respondents paid temporary total disability benefits again from December 31, 2024, through January 22, 2025. Respondents provided Claimant with light-duty work from January 23, 2025, through the end of his healing period, July 23, 2025—which was when Dr. Hurst placed him at maximum medical improvement. Respondents thus contend that Claimant is not entitled to temporary total disability benefits after July 23, 2025. Following his surgery by Dr. Arnold on November 3, 2025, he returned to work at full duty for the city on January 3, 2026.

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 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 the November 3, 2025, surgery by Dr. Christopher Arnold was reasonable and necessary for the treatment of his stipulated compensable knee injury of October 19, 2024. He is entitled to this surgery and related treatment at Respondents' expense.

4. Claimant has proven by a preponderance of the evidence that he is entitled to additional temporary total disability benefits from November 3, 2025, to January 2, 2026.

5. Claimant has proven by a preponderance of the evidence that he is entitled to a controverted fee on the additional indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2012).

ADJUDICATION

Summary of Evidence

Claimant was the sole hearing witness.

In addition to 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 one index page and 26 numbered pages thereafter; Respondents' Exhibit 1, another compilation of Claimant's medical records, consisting of one index page and 40 numbered pages thereafter; and Respondents' Exhibit 2, non-medical records, consisting of one index page and 12 numbered pages thereafter.

A. Additional Treatment

Claimant has asked that the Commission to find that he is entitled to additional medical treatment of his stipulated compensable right knee injuries by Dr. Christopher Arnold—with that treatment consisting of the right knee chondroplasty performed by Arnold on November 3, 2025. Respondents deny responsibility for this treatment.

At the hearing, Claimant testified that that he has been a firefighter for a little over 20 years—with 16 of those with Respondent City of Jonesboro. He has been a captain with the Jonesboro Fire Department for six years.

Asked how he injured his right knee during the first stipulated incident, July 6, 2022, Claimant related:

> I was in a house fire and the floor got weak, and my left leg went through the floor, my right leg did not. So when I fell face first in the floor, my right knee was above my head essentially. And I started noticing issues later that morning and went to the doctor.

He was on light duty for eight or nine weeks while he underwent physical therapy. Thereafter, he returned to full duty. It was Claimant's testimony that he no longer was having knee problems at that point. Until October 2024, the only further right knee treatment that he underwent was a steroid injection.

As for his second stipulated compensable right knee injury, which took place on October 19, 2024, Claimant stated:

> I was doing our department FEATS test, which is our physical agility test. We stimulate fire ground activities. I was in full gear on air with an air pack on my back, and I had a—what we call a high-rise pack. It's two sections of two-and-a-half-inch hose that's rolled up and we carry it on our shoulders. It weighs somewhere between 70 and 80 pounds, I believe. And I was going up the stairs, and I missed the first step, and my toes

> caught on the step, but my hell came down and slammed my knee with all that weight on it forward, and it basically just went dead after that.

After first going to urgent care, Claimant saw Dr. Spencer Guinn, who performed a right knee MRI and, thereafter, surgery.

He obtained a change of physician to Dr. Arnold in May 2025. The doctor recommended that Claimant undergo a scope to see what was wrong with his knee. Eventually, Arnold operated on him. Before this particular surgery, according to Claimant, the condition of his right knee was "terrible." He elaborated:

> I had pain all day every day. I was very limited in my movements as far as—obviously I couldn't run, jump or climb things, I couldn't knee. If I tried to get in the floor for something, I would have to work my way down to that. I couldn't just do things like normal. For a long period, I couldn't even touch my knee on the mattress because it would hurt so bad. And I—I don't know if that was from the first surgery or what, but.

With respect to the November 3, 2025, operation that Arnold performed, the following exchange took place:

> Q. Have you been able to function better after the surgery?
>
> A. Yes.
>
> Q. Describe that.
>
> A. I can climb stairs again, I can climb ladders again, I can pick up heavy weight and carry it, I can kneel again, I can crawl around floors like my job requires again, I can slightly jog, so it's completely different.
>
> Q. I take it you're not back to 100 percent?
>
> A. I'm not back to 100 percent.
>
> Q. But you—would you describe it as better than it was before you had the surgery with Dr. Arnold?

A. Much better.

However, he acknowledged on cross-examination that he recently failed a physical fitness test at work due to his right knee condition.

Claimant's testimony was that his stipulated compensable injuries are the only two instances when he has hurt his right knee. Other than follow-up appointments, he has no further treatment scheduled for his knee.

Under cross-examination, Claimant acknowledged that his first surgeon, Dr. Guinn, on July 23, 2025, recommended against additional surgical treatment. Moreover, Dr. Lawrence O'Malley likewise did not advise surgery. Claimant was unaware that while Dr. Arnold wrote that his right knee condition was "acute related to the workers' compensation injuries," he was "[u]nable to determine if it's from the first or the second injury."

Claimant underwent a functional capacity evaluation ("FCE") prior to Arnold's surgery. The evaluation reflected that he could return to work in a heavy-duty capacity. He was not aware that Dr. O'Malley's office gave him a full-duty release in October 2025.

On redirect-examination, Claimant discussed the FCE in greater detail. He described the testing as "just basic lifting of objects in a room and really not related to my job, not nearly on the level of what my job requires." Claimant explained:

> [The evaluator] asked me to crawl around in the floor a couple times. I struggled with that. Then he asked me to climb a ladder. I also struggled with that. And then pick up boxes of weights and put them on a chair and

> put them back in the floor. I believe it was some things to do with my hands, like fine motor skills maybe.

The following exchange took place:

> Q. The tasks that you described about climbing a ladder, like climbing a ladder, crawling around on the floor, did those cause you any discomfort?
>
> A. Absolutely.
>
> Q. Describe that.
>
> A. Crawling around was hard, putting my knee on anything, applying pressure to my knee, outside pressure to my knee, causing a lot of pain. Getting in the floor caused a lot of pain. Climbing ladders, it was a stepladder. Anytime I was taking my leg to an elevated position and trying to push off of that cause a lot of pain. And then coming back down it, trying to hold myself, the instability and the pain was there.

According to Claimant, he left the FCE "[k]ind of disappointed because it did not accurately portray my job."

Under questioning by the Commission, Claimant testified that the physical fitness test that he failed was more strenuous "by far" than the FCE.

Claimant clarified that the surgery that Dr. Arnold performed was a chondroplasty—not a cartilage transplant. He described the procedure:

> [Arnold] scoped it and cleaned those spots up and cleaned up cartilage damage all throughout my knee, behind my kneecap . . . [b]ut I had cartilage damage all throughout my knee that had not been cleaned up.
>
> The following exchange took place:
>
> Q. One of the things that I'm here on is additional treatment. What are you asking me to award you? Are you wanting the cartilage transplant? What are you wanting me to look at on that?

A. If I don't need that, then I don't want to.

Q. Okay. Did Ms. Edwards's clients pay for Arnold's surgery, the chondroplasty?

A. No.

Q. Are you wanting to be awarded that surgery?

A. Yes.

Respondents have not covered any of Claimant's treatment by Dr. Arnold since their initial visit.

The medical records in evidence reflect that Claimant underwent a right knee MRI on August 10, 2022—35 days after his stipulated compensable injury of July 5, 2022—that was negative. However, this was not the case when he underwent another MRI on the knee on November 17, 2024—29 days after his compensable injury of October 19, 2024. In this instance, the MRI showed a "[n]ew focal region of high-grade cartilage loss from the lateral femoral condyle far posteriorly with associated subchondral bone marrow edema."

When Claimant went to Dr. Morgan Benefield on October 31, 2024, he informed him that he was involved in a training accident on October 19 and had suffered from right knee pain since that time. The doctor order the MRI discussed above. When he saw Claimant again after the MRI, Benefield noted that the test revealed a focal cartilage lesion from the posterior lateral femoral condyle with surrounding bone marrow edema. The doctor referred him for physical therapy as well as for a surgical consultation.

Claimant saw Dr. Guinn on November 22, 2024. He informed the physician that he initially hurt his right knee in 2022 when he fell through a floor. On October 19, 2024, he exacerbated his condition when he hyperextended the knee while climbing stairs. An injection in July 2024 afforded only temporary relief. Nine weeks of physical therapy did not help. The doctor read Claimant's 2024 MRI to show "an osteochondral injury in the lateral femoral condyle, approximately 5 mm in size, not full thickness, which mild underlying subchondral edema." Dr. Guinn scheduled Claimant for a right knee arthroscopy with a debridement of a chondral defect of the lateral femoral condyle, along with a plica resection.

On December 31, 2024, Dr. Guinn operated, performing a right knee examination under anesthesia, followed by an arthroscopy with debridement of the OCD lesions of the lateral femoral condyle and lateral tibial plateau. His diagnosis was "[r]ight knee OCD lesions of the lateral femoral condyle and lateral tibial plateau."

A third MRI took place on March 19, 2025. This showed no significant change from the November 17, 2024, MRI. Claimant continued to progress in physical therapy, but reported that he was having ongoing pain with loaded weight bearing in closed chain, beginning with 90 degrees of flexion. David Flores, PT, DPT, wrote on April 2, 2025, that this pain "will still limit his ability to squat or kneel . . . ."

In a follow-up visit to Dr. Guinn on April 2, 2025, Claimant reported that he was having "a sensation of tearing" when pressure is applied to certain areas of his knee, along with hypersensitivity that had improved. Active leg elevation causes a popping sensation. Claimant related that it was challenging to rise from a kneeing or lunging

position. He declined injections on the basis that he felt his symptoms were not nerve-related. Guinn stated that the most recent MRI showed no change in the injury site; and he recommended continued physical therapy.

On May 20, 2025, Claimant presented to Dr. Arnold with continued right knee pain, along with stiffness, weakness, and "feelings of giving way." The doctor wrote: "Chondral defect lateral femoral condyle young active ideal body weight getting worse not better consider scope and assess for cartilage restoration[.]" He added: "[t]he symptoms are acute related to the Worker's Compensation injuries. Unable to determine if it is from the first o[r] the second injury."

Claimant returned to Dr. Guinn on July 23, 2026, for a review of Arnold's recommendation. The report reads in pertinent part:

> [Claimant] has been attending physical therapy, with his therapist reporting approximately 52 visits. However, he feels he has not made any progress. He reports an inability to squat or kneel and continues to be on light duty at work. He identifies the source of the pain as medial and posterior, with no lateral pain. He states that, overall, he cannot tell any difference from before surgery.
>
> . . .
>
> Right knee exhibits a normal gait with full range of motion. Maximal tenderness is about the medial knee. No tenderness lateral or posterolateral. No. crepitation. Some tenderness is present anteriorly about the patella, none over Hoffa's fat paid, none over the patella tendon. No instability. No swelling today compared to the opposite side.
>
> MRI shows a nonfull-thickness grade 3 lesion that was debrided back, approximately 5 mm x 4 mm, essentially without change from both MRIs.
>
> . . .

> Upon reevaluating his MRIs and operative report, it was noted that he had a nonfull-thickness grade 3 lesion, approximately 5 mm x 4 mm, which was debrided back. This finding remained consistent across both MRIs. Despite extensive rehabilitation, there has been no significant progress. The proposed surgery by Dr. Arnold was discussed, but the indications for synovectomy remain unclear. Given the size of the lesion (0.2 cm2), it does not meet the criteria for cartilage restoration, which typically begins at 1 cm2. The rationale for a synovectomy in this case is also uncertain. It was recommended to him, his wife, and Ms. Crystal Gilbert, his work comp representative, that he undergo an independent medical evaluation. From my perspective, he has reached maximum medical improvement and is released for full duty at work.

Dr. O'Malley conducted an independent medical evaluation on September 4, 2025. His report reads in pertinent part:

> MRI is reviewed both preoperatively and postoperatively of his right knee. MRI from October shows a very small chondral defect of the posterior aspect of the lateral femoral condyle. MRI from March of 2025 shows this defect slightly larger but it measures approximately 4 mm in diameter there also does appear to be some chondral loss of the lateral tibial plateau. No meniscus tears are identified. No other abnormalities are identified on the MRI.
>
> . . .
>
> I have reviewed all of the patient's medical documentation and previous imaging. I am struggling to correlate the patient's complaints with objective MRI findings or surgical findings. The patient has global knee pain that does not correlate to the chondral defect of the lateral tibial plateau or the lateral femoral condyle. He also has what appears to be kissing lesions involving the lateral femoral condyle and lateral tibial plateau per the operative note from December of 2024. Because of the kissing lesions, he does not qualify for any cartilage transplant. Kissing lesions are contraindicated to be treated with osteochondral allograft or cartilage transplant due to the high failure rate.
>
> At this point I would recommend a functional capacity evaluation. The patient's subjective complaints do not match his objective findings on physical exam or MRI findings. If the patient does pass the functional capacity evaluation my next recommendation would be a knee genicular block to try to help[with his chronic knee pain. I do not feel so that any

> other surgery particularly any cartilage transplant would benefit this patient based off his MRI findings and also physical exam findings. I also do not believe that the patient needs any sort of alignment surgery due to the fact that he is in slight varus and this actually offloads the lateral compartment.
>
> Prior to his functional capacity evaluation I would keep him on 20 lb. lifting restrictions and sit and stand as needed at work.

The FCE took place on September 22, 2025. As alluded to above, the evaluator found that Claimant gave a reliable effort, with 49/50 consistency measures with expected limits, and demonstrated the ability to work in the Heavy classification. Following up on this, Dr. O'Malley wrote on October 6, 2025, that "[i]t is my medical opinion that [Claimant] may return to work full duty without restrictions."

Dr. Arnold operated on November 3, 2025, performing the following: (1) right knee arthroscopic abrasion chondroplasty lateral femoral condyle; (2) right knee arthroscopic chondroplasty patella; and (3) right knee arthroscopic resection suprapatellar plica medial plica. The pre-operative diagnoses he assigned were:

1. Right knee chondral defect lateral femoral condyle
2. Right knee chondral defect patella

The post-operative diagnoses were:

1. Right knee grade 4 chondral defect lateral femoral condyle 2x1 cm.
2. Right knee grade 2-3 defect patella
3. Right knee extensor mechanism misalignment
4. Right knee suprapatellar plica medial plica

Arnold's report includes the following:

> [Claimant] had a chondroplasty [by Dr. Guinn] with no relief. He has since been treated with therapy anti-inflammatories corticosteroid injection. He has had persistent pain and swelling. Clinically he has findings consistent with a chondral defect lateral femoral condyle and possibly patella . . . At this point [after the latest surgery by Arnold] it was felt we had an excellent

> abrasion chondroplasty, chondroplasty, plica excision. There was no further pathology present.

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).

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).

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' 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*.

Claimant's testimony is that the treatment he is seeking is <u>not</u> a cartilage transplant that Dr. Arnold was considering, but instead the revision surgery that Arnold actually on November 3, 2025, which was comprised of three procedures: (1) a right knee arthroscopic abrasion chondroplasty lateral femoral condyle; (2) a right knee arthroscopic chondroplasty patella; and (3) a right knee arthroscopic resection suprapatellar plica medial plica.—which a spinal cord stimulator. I credit Claimant's testimony that he was still experiencing problems after Guinn's surgery, that that his

condition improved following the Arnold surgery. Post-surgical improvement may properly be considered in determining whether the procedure at issue was reasonable and necessary. *Cox v. Klipsch Assoc.*, 71 Ark. App. 433, 30 S.W.3d 764 (2000). Dr. Guinn never opined on whether Claimant should undergo this operation; instead, his opinion was confined to the cartilage transplant that Claimant is not seeking. Dr. O'Malley, on the other hand, rendered an opinion as part of his independent evaluation "that any other surgery . . . would benefit this patient . . . ." But I am unable to credit this opinion in light of my finding that the November 2025 surgery by Dr. Arnold DID benefit Claimant. 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); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999).

Claimant has established under *Artex Hydrophonics, supra*, and its progeny that the November 3, 2025, surgery was geared toward management of Claimant's compensable knee injury—and that it was successful in this regard. Of course, he must also prove that it is causally related to his compensable injury. *See Pulaski Cty. Spec. Sch. Dist. v. Tenner*, 2013 Ark. App. 569, 2013 Ark. App. LEXIS 601. I find that Claimant has done this as well; the evidence at bar establishes that the surgery that Dr. Arnold performed is causally related to the October 19, 2024, compensable right knee injury. Consequently, he has proven by a preponderance of the evidence that such surgery was reasonable and necessary to treat his stipulated compensable right knee injury, and thus the financial responsibility of Respondents.

B. Temporary Total Disability

As part of this claim, Claimant has asked that he be awarded temporary total disability benefits from the date last paid to a date yet to be determined. Respondents, on the other hand, have asserted that Claimant is not entitled to any more benefits of this type.

The stipulated compensable injuries to Claimant's right knee are scheduled in nature. *See* Ark. Code Ann. § 11-9-521(a)(3) (Repl. 2012). An employee who has sustained a compensable scheduled injury is entitled to temporary total disability compensation "during the healing period or until the employee returns to work, whichever occurs first . . . ." *Id*. § 11-9-521(a). *See Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. *Mad Butcher, Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Claimant must prove his entitlement to temporary total disability benefits by a preponderance of the evidence. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012).

At the hearing, the following exchange took place:

Q. What does . . . a fire captain do?

A. We are in charge of our crew, our apparatus, our station, and we take command of single company scenes. At times we have to step up and run the battalion chief position, which is over half of the city. We still go in to fight fires, we still go in and do everything with medical calls. Any call we go on, we're working with our crew, but we're kind of in charge of our crew.

Q. Okay. You have a lot of supervisory responsibility?

A. Yes, sir.

Q. But you also have a lot of physical demands just like any other firefighter, right?

A. Yes, sir.

Q. And what do those include?

A. Climbing ladders, picking up patients, moving patients, moving hoses, climbing stairs, pretty well anything you can imagine on a fire scene or any type of emergency scene, moving heavy equipment, cutting apart cars, the list goes on. It could go on all day . . . [c]arrying heavy people downstairs, carrying them across houses, high-angle rescues, trench rescues, confined-space rescues, anything rescue where it could be someone is stuck above something, below something, or in something, we'll go get them.

Q. Does it require you to run?

A. At times, yes.

Q. Jump?

A. Yes.

Q. Kneel?

A. Yes.

Q. Okay.

A. Kneel a lot.

It was Claimant's testimony that following his 2022 right knee injury, he continued to work at light duty while he underwent physical therapy. Regarding his 2024 injury, he missed two weeks of work after his surgery by Dr. Guinn; but he agreed with his attorney that this particular period is not at issue in this proceeding. After this, he went

back to work at light duty, and continued to serve in this capacity through October 7, 2025. At that point, he was advised that Dr. Guinn had cleared him to work regular duty with no restrictions.

After his surgery by Dr. Arnold on November 3, 2025, Claimant was taken off work by him; and he remained off work until January 3, 2026. On that day, he returned at full duty. He testified that he is going to be able to perform his firefighting job for the foreseeable future.

Under questioning by the Commission, the following exchange took place:

Q. You heard when your attorney today, when we were amending the issues and you've asked for a start date or another start date for your temporary total disability benefits beginning October 8th of last year, did you hear that?

A. Yes, sir.

Q. What of significance happened around that time?

A. I was on light duty and I was doing computer work, and my assistant chief came in, and—it was the afternoon of the 7th—he came in and told me that I was to go back to work full duty with no restrictions, and my knee was in no shape to do that. So I questioned it, and he said basically that Dr. Guinn or Dr. O'Malley one—I'm not sure which—had cleared me to go back to full duty, no restrictions, and that's what workers' comp was going to have me do and, If I couldn't do that, then it was up to me to go private pay and have my knee repaired, basically.

Q. And so did you continue work after the chief told you that day, or what did you do?

A. No. They took me off of light duty and said that I wasn't allowed to work light duty, so I was using my sick time.

Q. Okay. So you just went home, basically?

A. Yes.

Following up on Dr. O'Malley's recommendation that Claimant undergo an FCE, the evaluation took place on September 22, 2025. As alluded to above, the evaluator found that Claimant gave a reliable effort, with 49/50 consistency measures with expected limits, and demonstrated the ability to work in the Heavy classification. Following up on this, Dr. O'Malley wrote on October 6, 2025, that "[i]t is my medical opinion that [Claimant] may return to work full duty without restrictions."

The evidence shows that the above opinion led Respondent employer to cease furnishing Claimant with light-duty work. Under Ark. Code Ann. § 11-9-526 (Repl. 2012):

> If any injured employee refuses employment suitable to his or her capacity offered to or procured for him or her, he or she shall not be entitled to any compensation during the continuance of the refusal, unless in the opinion of the Workers' Compensation Commission, the refusal is justifiable.

Claimant in the FCE demonstrated the ability to perform work in the Heavy category. It was this finding that led O'Malley to render the above opinion. I credit it. Claimant's refusal to work at that point was not justifiable. Accordingly, he was not entitled to additional temporary total disability benefits during that period of refusal.

However, that period ended when Claimant underwent the surgery by Dr. Arnold on November 3, 2025. At that point, the refusal unquestionably became justifiable; Arnold took him off work. Claimant once again became entitled to temporary total disability benefits until January 3, 2026, when he went back to work at full duty.

Therefore, he has met his burden of proving his entitlement to additional benefits of this type for this period.

C. Attorneys' Fee

Claimant has asserted that he is entitled to a controverted attorney's fee in this matter. One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). In this case, the fee would be twenty-five percent (25%) of any indemnity benefits awarded herein, one-half of which would be paid by Claimant and one-half to be paid by Respondents in accordance with *See* Ark. Code Ann. § 11-9-715 (Repl. 2012). *See Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

The evidence before me clearly shows that Respondents have controverted Claimant's entitlement to the additional temporary total disability benefits awarded herein. Thus, the evidence preponderates that his counsel, the Hon. Mark Alan Peoples, is entitled to the fee as set out above.

CONCLUSION AND AWARD

Respondents are directed to furnish/pay 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).

Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee awarded herein, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2012).

IT IS SO ORDERED.

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Hon. O. Milton Fine II
Chief Administrative Law Judge