BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. G500916

LAQUITA I. FERRIS, EMPLOYEE	**CLAIMANT**
vs.	
BAXTER COUNTY REGIONAL HOSPITAL, SELF-INSURED EMPLOYER	**RESPONDENT #1**
RISK MANAGEMENT RESOURCES,TPA	**RESPONDENT #1**
DEATH & PERMANENT DISABILILTY TRUST FUND	**RESPONDENT #2**

OPINION FILED SEPTEMBER 12, 2023

Hearing before Administrative Law Judge, James D. Kennedy, on the 19th day of July, 2023, in Mountain Home, Baxter County, Arkansas.

Claimant is represented by Mr. Frederick S. "Rick" Spencer, Attorney-at-Law, of Mountain Home, Arkansas.

Respondents #1 are represented by Mr. Walter A. Murray, Attorney-at-Law, of Little Rock, Arkansas.

Respondent #2 is represented by Ms. Christy L. King, Attorney-at-Law, of Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 19th day of July, 2023, to determine the claimant's entitlement to additional medical treatment under the direction of Dr. Chris Arnold, and additionally, whether the claimant is entitled to permanent and total disability, plus attorney fees. Respondent #2 waived its right of appearance. A copy of the Prehearing Order dated February 14, 2023, was marked "Commission Exhibit 1" and made part of the record without objection. The Order provided that the parties stipulated that the Arkansas Workers' Compensation has jurisdiction of the case and that there was an employer/employee relationship which existed on February 1, 2015, when the claimant

sustained a compensable injury to her left knee arising out of her employment. The claimant earned an average weekly wage of $398.36, entitling her to compensation rates of $266.00 for temporary total disability and $200.00 for permanent partial disability per week. Further, the Court of Appeals decision dated December 12, 2018, was the law of the case. Both parties' response to the prehearing questionnaire were made a part of the record without objection. The initial witness to testify was the claimant, Laquita Ferris. Her friend, Cheryl Edwards, also testified. The claimant submitted one exhibit which consisted of thirty-one (31) pages of medical reports with an index which was admitted without objection. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT AND CONCLUSSIONS OF LAW

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

2. That an employer/employee relationship existed on February 1, 2015, when the claimant sustained a compensable injury to her right knee.

3. Claimant earned an average weekly wage of $398.36, entitling her to compensation rates of $266.00 for temporary total disability and $200.00 for permanent partial disability.

4. That the claimant has proven, by a preponderance of the credible evidence, that she is entitled to additional reasonable and necessary medical treatment consisting of conservative treatment and management under the direction of Dr. Chris Arnold and the conservative treatment and management is causally related and reasonably necessary for the treatment of the work-related left knee injury.

5. The claimant has failed to satisfy the burden of proof that she is permanently and totally disabled.

6. All other issues are moot.
7. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, testified that she was sixty-one (61) years old at the time of the hearing and was born on March 12, 1962. She graduated the eleventh grade, obtained her GED, and then obtained her CNA certification. She worked for the respondent for approximately thirteen (13) years and was working there when she was hurt on February 1, 2015. She was originally treated by Dr. Rauls, an orthopedic surgeon in Mt. Home, who performed a scope on her left knee, and who then performed a reconstruction of the knee. Neither was successful. She testified she then obtained a change of physician and was treated by Dr. Chris Arnold, who performed a total knee replacement on February 27, 2020, and that procedure was unsuccessful. Approximately three (3) months after the knee replacement, a manipulation was performed to break up the scar tissue and this was the last procedure performed by Dr. Arnold. "Since my total knee replacement, I have not been able to do basically pretty much anything long term. Hiking, I used to love hiking. That's pretty much out of the question. Riding bikes, gardening, pretty much anything that I used to enjoy is pretty much gone." (Tr. 7-10) "I do not have a day that I am not in pain."

In regard to her use of a cane, she stated "My knee is very weak. I would fall without it. My knee locks up. When I'm walking, it's not unusual for my knee to lock up and for me to fall. Short distances, I would probably be okay just walking a short distance without it, but I don't take a chance." (Tr. 11) She also stated that she wore a knee brace

ninety-five percent (95%) of the time. The claimant then took her knee brace off to show how the left knee had atrophied. (Tr. 12-13) She went on to say that she spends most of the day in bed due to excruciating pain. (Tr. 14) "Laying down is where I get most of my relief, with it propped up."

I take Hydrocodone, 10 milligrams, three (3) times a day and admitted that she suffered no side effects from the medication. (Tr. 15) She also stated that she takes over the counter Tylenol and also Flexeril and suffers from leg cramps. The injury has led to depression and she's taking 50 milligrams of Lexapro, once a day, along with Lorazepam at night. She admitted to driving, but not long distances. She calls her groceries in to Walmart and they load it. "I cannot go walk around the store and do my grocery shopping any longer." (Tr. 16-17)

In regard to sleep, she testified her sleep habits were terrible and she wakes up multiple times a night. The nerves on the right side of her knee where Dr. Rauls performed the surgery were damaged. On a good night, she stated she could get six (6) hours of sleep and there were ten (10) or eleven (11) good nights a month. On a bad night she would only get three (3) or four (4) hours of sleep. (Tr. 18-19) She went on to testify that she never feels rested in the morning. (Tr. 31)

Under cross-examination, the claimant testified that she was in bed off and on all day, and admitted that although she did not get eight (8) hours of sleep a night, she would get some sleep during the day. "I might sleep an hour or so and I might be awake. And I might be awake a couple of hours or so and then I might be asleep again." (Tr. 24) She admitted that she did not wear the knee brace all of the time. She also admitted that she had ridden a motorcycle with her fiance two (2) years ago, but stated they had sold the

motorcycle. She denied a trip to Sturgis or Little Rock on the motorcycle and stated her longest trip on it was only about eight (8) miles. (Tr. 26-27) In regard to household chores, the claimant testified that she did the dishes but did not vacuum and that she does the laundry, if she feels like it. (Tr. 31)

Cheryl Edwards was called as a witness and testified that she sees the claimant "probably weekly, every other week." She stated she works as a travel nurse so she is not home as much. "But when I do see her, it's, I go to her house and she's either like sitting in her recliner with her leg up or sitting on her patio. She has came to some of the softball games, but she's you know, with her cane. It scares me to death; I'm afraid she's gonna fall. But you can tell she's in pain. She's grimacing, she's hurting." "She doesn't get out and do things with us like she used to also." (Tr. 34-35) Ms. Edwards went on to state that as an ICU nurse, she will go on facial looks and the claimant is not one who will say I am hurting but with her grimaces and such, I would rate her flat score a ten (10), for severe pain. She also felt that there was severe atrophy of the left knee. (Tr. 36-37)

Under cross-examination, Ms. Edwards was asked about muscle tension and could it be faked. She responded that it could be faked but she did not see "why they would." (Tr. 39)

In regard to the medical that was admitted without objection, a report dated July 6, 2015, a follow-up report by Dr. Rauls, provided for an assessment of left knee pain following a patellofemoral ligament reconstruction on May 5 and recommended beginning physical therapy and to remain off work with no duty for another four (4) weeks. (Cl. Ex. 1, P. 1)

The next medical report dated October 15, 2015, was provided by Dr. Arnold and stated that in regard to the left knee pain, following MPFL reconstruction, he observed two (2) issues, severe arthrofibrosis and would recommend injections, and if not better in a month, he would recommend lysis of adhesions, arthroscopically, and in addition felt that she had a neuroma about the media condyle. If she was not better in a month, he recommended lysis of the adhesions and manipulation. The medical report referred to a prior procedure in 1982 and a previous tibial tubercleplasty in 2005 and that she did well until the recent work-related injury. He also stated that he wanted her to only perform a sit down job. (Cl. Ex. 1, P. 2-4) The claimant returned to Dr. Arnold November 19, 2015, with left knee pain and with severe arthrofibrosis. The plan provided that the claimant had a very fibrotic knee. He opined that the next step would be a scope with lysis of adhesions and again recommended a sit down job only. (Cl. Ex. 1, P. 5-6).

Surgery was then performed by Dr. Arnold on December 3, 2015, and the report provided under findings that there was an exuberant amount of fibrotic tissue about the suprapatellar space along with a grade 3 chondral defect patella. The lateral meniscus revealed some calcification. The knee was manipulated after the lysis of adhesions. He opined that if she experienced persistent symptoms, he would recommend exploration of the medial condyle, but he thought that was unlikely. (Cl. Ex. 1, P. 7-9) An AP of the lateral left knee dated December 3, 2015, provided for calcification about the medial lateral meniscus. (Cl. Ex. 1, P. 10)

The claimant returned for a follow-up with Dr. Arnold on December 17, 2015, and the report provided she was better than before the surgery and that she had to get aggressive with the range of motion. He again recommended a sit down job only.

(Cl. Ex. 1, P. 11) The claimant then again returned to Dr. Arnold on January 14, 2016, and the report provided her quads were weak with a trace of effusion, and she had improved mobility but still had significant pain. He felt that she was improving and that they needed to get aggressive with strengthening and she needed to perform a sit down job. (Cl. Ex. 1, P. 12)

The claimant presented to Dr. Mark A. Powell on February 3, 2016, with the chief complaint being left knee swelling. The report provided her left knee was hyper-sensitive to the touch but not warm, and she was able to perform a straight leg raise without an extensor leg. He recommended that she continue to follow Dr. Arnolds' protocol and gave her an off work note. (Cl. Ex. 1, P. 13) The claimant then returned to Dr. Arnold on February 11, 2016, and the report provided that her motion was improving, and that there was a little inflammation. He recommended a cortisone shot and she agreed. He again recommended a sit down job. (Cl. Ex. 1, P. 14) The claimant returned to Dr. Arnold again on March 10, 2016, and the report provided that she was "doing great" and he recommended viscosupplementation into the left knee and if it was not better, a cartilage restoration procedure such as an osteoarticular autograft and in regard to work, again recommended a sit down job. (Cl. Ex. 1, P. 15) The claimant continued to return to Dr. Arnold with the next visit on April 7, 2016. The report provided for weak quads of the left knee and a recommendation of gel shots and if she did not get better, a cartilage restoration procedure of the patella. (Cl. Ex. 1, P.16)

A report by Dr. Terry J. Sites on April 22, 27, 2016, provided that the claimant returned for a second left knee Supartz injection which was tolerated well and that she suffered from osteoarthritis of the left knee (Cl. Ex. 1, P.17) However the claimant

presented to Dr. Powell on April 27, 2016, for a third Supartz injection, and stated that the last injection caused a rash and fluid built up in a knot. The claimant wanted to continue with the injections. She then presented to Dr. Arnold on May 5, 2016, and the report provided there was left knee pain secondary to a grade 3 chondral defect and opined that her current symptomatology was related to wear behind the patella. He opined that he thought the next step would be to scope the knee and perform a cartilage restoration procedure of the patella and recommended an osteoarticular autograft-patella. (Cl. Ex. 1, P. 19-20)

A Functional Capacity Impairment Evaluation was performed on November 5, 2020, and the claimant was rated with a fifteen percent (15%) impairment rating to the body as a whole and thirty-seven percent (37%) lower extremity impairment as a result of a work-related injury and the report stated that the findings were the result of objective findings. Dr. Arnold signed off and agreed with the impairment evaluation. (Cl. Ex. 1, P. 21-25) Another follow-up occurred on August 3, 2021, with Advanced Orthopedic Specialists and Dr. Arnold, and the plan provided that the claimant had some tendinitis and recommended Mobic home exercises and if no better in six (6) months a further work up. The report provided that the knee was better than before the surgery. (Cl. Ex. 1, P. 26-28) The claimant returned on August 18, 2022, the last report of record, and the report by Dr. Arnold provided that after counseling with the patient, we decided on conservative management and observation. An x-ray of the left knee provided for good positioning of the components. (Cl. Ex. 1, P. 29-30)

DISCUSSION AND ADJUDICATION OF ISSUES

In the present matter, the parties stipulated that the claimant sustained a compensable injury to her left knee on February 1, 2015. The claimant is therefore not required to establish "objective medical findings" in order to prove that she is entitled to additional benefits. *Chamber Door Indus., Inc. v Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997)

However, when assessing whether medical treatment is reasonably necessary for the treatment of a compensable injury, we must analyze the proposed procedure and the condition that it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation filed December 13, 1989. (Claim No. D512553). The respondent is only responsible for medical services which are causally related to the compensable injury. Treatments to reduce or alleviate symptoms resulting from a compensable injury, to maintain the level of healing achieved, or to prevent further deterioration of the damage produced by the compensable injury are considered reasonable medical services. *Foster v. Kann Enterprises*, 2009 Ark. App. 746, 350 S.W.2d 796 (2009). Liability for additional medical treatment may extend beyond the treatment healing period as long as the treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 180 S.W.3d 31 (2004).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden, by a preponderance of the evidence. *Dalton v. Allen Engineering Co.*, 66 Ark. App 260, 635 S.W.2d 543. Injured employees have the burden of proving, by a preponderance of the evidence, that the medical treatment is reasonably necessary for the treatment of the compensable injury. *Owens Plating Co. v. Graham*, 102 Ark. App 299, 284 S.W. 3d 537

(2008). What constitutes reasonable and necessary treatment is a question of fact for the Commission. *Anaya v. Newberry's 3N Mill*, 102 Ark. App. 119, 282 S.W.3d 269 (2008).

The claimant injured her left knee in a work-related injury on February 1, 2015. The injury was accepted as compensable and surgery was performed on her left knee by Dr. Rauls. The claimant was not satisfied with the results of her knee surgery and obtained a change of physician to Dr. Arnold, who has treated her since the change of physician order was obtained. Dr. Arnold performed a second surgery on December 3, 2015, where the knee was manipulated after the lysis of adhesions.

On March 10, 2016, Dr. Arnold recommended visocupplementaion into the left knee and if the claimant did not improve, a cartilage restoration procedure through an osteoarticular autograft. Since that date, the claimant has been treated with injections along with other conservative treatments. On the claimant's last visit of record with Dr. Arnold on August 18, 2022, conservative treatment management was recommended.

In workers' compensation law, the employer takes the employee as he finds him and employment circumstances that aggravate pre-existing conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W. 3d 150 (2003). Here, the claimant had no doubt suffered from some previous issues involving her left knee. It is well settled that the Commission has the authority to accept or reject medical opinions and the authority to determine their medical soundness and probative force. In the present matter there appears to be no release for the claimant from Dr. Arnold and although he had previously recommended other more aggressive treatments, his final report of record on August 18, 2022, provided that the claimant should be treated with

conservative treatment and management. After reviewing all of the evidence, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has satisfied her burden of proof to prove, by a preponderance of the credible evidence, that she is entitled to conservative treatment and management as recommended by Dr. Arnold.

In regard to permanent and total disability, it is noted that the claimant is not entitled to wage loss disability for a scheduled injury. Ark. Code Ann. §11-9-521. *Moser v. Ark. Lime Co.,* 40 Ark. App 113, 896 S.W.2d 188 (1993). Specifically, with respect to permanent and total disability benefits, Ark. Code Ann. § 11-9-519 (e) provides as follows:

> (1) “Permanent total disability” means inability to earn any meaningful wage in the same or other employment.
>
> (2) The burden of proof shall be on the employee to prove inability to earn any meaning wage in the same or other employment.

Arkansas Code Annotated § 11-9-102(4)(F)(ii)(a) requires further that: (a) Permanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment, and; (b) If any pre-existing disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent disability or need of treatment. Permanent impairment is any functional or anatomical loss after the healing period has been reached. *Johnson v. Gen. Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). Any determination of the existence or extent of a physical impairment shall be supported by objective and measurable physical findings. Ark. Code Ann. §11-9-704(c)(1). Objective findings are those that cannot come under the voluntary

control of the claimant. Ark. Code Ann. §11-9-102(16)(A)(i). Medical opinions addressing impairment must be stated within a reasonable degree of medical certainty. In the present matter, Dr. Arnold has never opined that the claimant was unable to work but has stated that the claimant has gotten better after the surgeries and treatments and opined as early as the year 2016, that the claimant could perform sit down jobs, which he continued to recommend. He has never issued an opinion that provided the claimant was unable to work. He agreed with the impairment evaluation provided by Functional Testing Centers, Inc., of a fifteen percent (15%) whole person rating and a thirty-seven percent (37%) lower extremity rating as a result of the work-related injury.

It is also noted that the claimant testified she could drive short distances and perform certain household chores, but could not perform them over an extended period of time due to pain, and further that the claimant's friend who was a nurse testified that the claimant grimaced when performing certain actions. However, the friend agreed under cross-examination that "muscle tension" could be faked, stating "I mean, I guess they could, but I don't know why they would." Based upon the available evidence and the applicable law, there is no alternative but to find that the claimant has failed to satisfy her burden of proof to prove, by a preponderance of the evidence, that she is permanently and totally disabled.

After reviewing all of the evidence without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has satisfied her burden of proof to prove, by a preponderance of the evidence, that she is entitled to additional reasonable and necessary medical treatment consisting of conservative treatment and management under the direction of Dr. Chris Arnold and that the conservative treatment and

management is causally related and reasonably necessary for the treatment of the work-related left knee injury. The claimant has failed to satisfy the required burden of proof to prove, by a preponderance of the evidence, that she is permanently and totally disabled. All other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

____
JAMES D. KENNEDY
Administrative Law Judge