

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H301917**

SANDER D. GILLISPIE, EMPLOYEE

CLAIMANT

KIPP DELTA COLLEGE PREP SCHOOL, EMPLOYER

RESPONDENT

**EMPLOYERS INS. CO. OF WAUSAU/
LIBERTY MUTUAL GROUP, CARRIER/TPA**

RESPONDENT

OPINION FILED 17 JANUARY 2025

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 17 October 2024 in Helena-West Helena, Arkansas.

The Hunter Law Firm, Mr. Scott Hunter, appeared for the claimant.

The Ryburn Law Firm, Mr. Michael Ryburn, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 17 October 2024 in Helena-West Helena, Arkansas. The parties participated in a prehearing telephone conference on 25 June 2024. A Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on 26 June 2024.

That Order set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. The employer/employee/carrier-TPA relationship existed at all relevant times.
3. The claimant's average weekly wage entitles her to Temporary Total Disability (TTD) benefits at a rate of \$835 per week and Permanent Partial Disability (PPD) benefits at a rate of \$626 per week.
4. TTD benefits were paid by the respondents until 20 November 2023, when she was released to regular duty at maximum medical improvement (MMI) with a zero percent (0%) permanent impairment rating.¹

¹ This stipulation was agreed upon by the parties at the outset of the hearing. [TR at 5.]

The Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant is entitled to additional benefits, specifically whether she is entitled to additional TTD benefits and additional medical treatment.
2. Whether the claimant is entitled to an attorney's fee.

All other ISSUES are reserved.²

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated into the Prehearing Order. The claimant contends that the respondents have paid for some medical treatment, but have failed to pay for proper TTD benefits and additional necessary medical treatment. The respondents contend that the claimant fell at work and injured her left knee. Benefits were paid for medical treatment and TTD. She did not sustain a compensable injury to her back, feet, or hips.

The claimant was the only WITNESS.

The EVIDENCE considered in this claim consisted of the hearing testimony along with the following EXHIBITS: Commission's Exhibit No 1 (the Prehearing Order) and Claimant's Exhibit No 1 (an index page and forty pages of medical records).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing her demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.

² The respondents acknowledge that the claimant fell and injured her knee at work. She requested a hearing on her entitlement to additional medical and TTD benefits. The bulk of the testimony and the medical evidence presented, however, related to reported pain in the claimant's back and hips and treatment(s) that she sought or is seeking related thereto. The Prehearing Order notes that the respondents specifically deny that the claimant sustained compensable injuries to her back, hips, or feet. Whether such alleged injuries are compensable was not an issue that the parties designated for litigation at the hearing. As indicated above, this Opinion is limited to the issues outlined in the Prehearing Order and are being addressed only to the extent that they pertain to the claimant's compensable left knee injury. To the extent that the claimant seeks benefits regarding her back, hips, and/or feet, any such issues are reserved and not addressed herein.

2. The previously-noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of the evidence that she is entitled to additional medical benefits in connection with her compensable left knee injury.
4. The claimant failed to prove by a preponderance of the evidence that she is entitled to additional TTD benefits in connection with her compensable left knee injury.
5. The claimant failed to prove by a preponderance of the evidence that she is entitled to an attorney's fee.

III. HEARING TESTIMONY AND EVIDENCE

Claimant Sandra Gillispie

The claimant testified that she is fifty years old with bachelor's degrees in business administration and elementary education. She also holds a master's degree in curriculum studies and is currently enrolled in another master's program in instructional design and computer technology. She began working for the respondent-employer on 30 June 2021 as a teacher, coach, and building facilitator.

On 16 March 2023, the claimant slipped and fell at work. She testified that she reported the injury before seeking treatment.

Q: I see. And what—what body parts did you injure in the fall?

A: Well, when I went into the air and I came down, I landed on my buttocks, but my left knee, the skin was knocked off or whatever, so when I got to the hospital, they ended up putting that left—that left knee like in a little brace like.

Q: Okay. And so did you take yourself to the hospital? I mean, what happened there?

A: Yes, sir.

Q: And this was on the same day of the accident?

A: Yes, sir.

Q: And so what hospital did you go to?

A: The Methodist in West Memphis.

[TR at 11-12.]

The claimant was later seen by Jeffrey Pipkin, NP-C, at OrthoXpress in Tupelo, Mississippi. She testified that she complained to him of pain in her buttocks. Mr. Pipkin ordered some diagnostic scans and eventually referred her to the Semmes-Murphey clinic for further evaluation. The claimant underwent some physical therapy and steroid injections before being released at MMI by Pipkin in November of 2023.

Q: Okay. And as far as—Then it looks like he released you at maximum—at maximum medical improvement. What was going on then?

A: That was after I got the injections from Semmes and Murphy. And when I came back with—from the injections and me also doing physical therapy, I did feel better. And he also released me to do like some light duty or whatever. I did tell him, you know, I felt better, so he released me to do like some light duty or whatever, and I did tell him, you know, I felt better, so he released me I think in November [of 2023], but then—but even that day when he released me, I did tell him I felt minor pain ‘cause every time I went to his office, he always gave me a scale of pain. The pain never completely stopped, but it was tolerable. And so again from being released from Semmes and Murphy with their discharge paper, they kind of gave an idea what to look for, and so I was fine. At least I thought I was.

[TR at 16.]

The claimant then testified that she had a new job beginning in January of 2024, and she wanted to make sure that some lingering pain would not impact her new job performance. The claimant eventually contacted the respondents, who denied coverage for additional treatment or benefits. According to her testimony, the claimant works as an independent contractor for Kids First Education. After she began seeing Mr. Pipkin again in 2024, he restricted her work status. She stated that her employer limited her to “one day a week until I get off this medical report.” [TR at 19.]

On cross examination, the claimant confirmed a portion of Mr. Pipkin’s note where he recorded that she was “feeling great.” [TR at 23.] The claimant testified that she did not return to the respondent-employer upon her release from care and that she was unable to secure other employment before her release.

Q: When you got released, you had been paid up to that day you got released. Did you go back to KIPP Delta?

A: No, sir.

Q: Okay. Did you start looking for another job?

A: Yes, sir.

Q: And did you find one?

A: I went on four interviews and I got hired on all four, but when I told them that I was still on the medical term, I can't say for sure that I didn't get hired but I'm almost certain that that's why, because I'm still on the medical—

Id. She clarified that she was seeking employment in October, before her release.

The claimant continues to work for Kids First; and she confirmed that her injury did not disrupt her part-time work at a tax accounting business that she owns. She described that work as seasonal and mostly around tax season.

According to her testimony, the claimant was supposed to begin working for Kids First in January of 2024, but her start was delayed until February due to a snowstorm. She described her work as limited “until I get off doctor care.” [TR at 26.] Asked again when she began working for Kids First, she answered, “I started February 5, and I did my application and got hired on October 13.” *Id.*

The claimant's cross examination continued:

Q: Okay. Now the—Page Five of your exhibit is from January 8th of '24. This is [Mr.] Pipkin again.

A: Uh-huh.

Q: And he says, “On her last visit, her pain had completely resolved.”

A: Uh-huh.

Q: It also says, “But over the last month, she's gotten a new job that requires her to drive a lot.”

A: Uh-huh. But I hadn't started the job, though. When I went in there, I told them, “I got a new job and it's going to require me to drive a lot. I need to be fixed.” That's what I said to him.

Q: “She has taken a new job that requires her to drive a lot over the last month.” So had you been working in January of '24?

A: No, sir. No. So that's what I'm saying. When that pain came and I went to him, I told him, “I have taken a new job and it's going to require me to drive a lot. This pain has started coming back, and I need this pain to stop.” That's what I went in there for because of pain.

Q: “She noticed the pain and returned after having to drive.”

A: I haven't drove. I—The new job was going to require me to drive. I haven't drove because I hadn't started the new job.

Q: Do you have a claim against the employer Kids First- Mississippi?

A: I hadn't started the job. My injury didn't come from Kids First. My injury came from KIPP.

[TR at 27-28.]

Medical and Documentary Evidence

On 20 November 2023, the claimant saw Mr. Pipkin at OrthoXpress in Tupelo, Mississippi. The Chief Complaints are listed as Bilateral Hip Pain and Low Back Pain.

That note also includes:

HPI

Sandra comes to the clinic today for follow-up of bilateral hip pain and low back pain. She does have a long history of low back pain. She was previously treated by Brandy Blanton, NP, at OrthoXpress in Starkville beginning March 29th. She was treated for her left hip pain and left knee pain with injections, oral medications, [and] physical therapy. She did have MRI results of the bilateral hips which were fairly unremarkable other than mild degeneration of the right superior acetabular labrum but no tear. She was seen in our clinic on May 2nd and was diagnosed with lumbar radiculopathy, left SI joint inflammation, and concern for lumbar spine HNP. At that time, her left SI joint was injected with Kenalog and lidocaine, she was given IM Toradol, she was placed on diclofenac and baclofen, she was kept off of work, and she was sent for an MRI of her lumbar spine. She got tremendous relief from the SI joint injection. MRI did confirm small disc bulges at L3-L4, L4-L5, and L5-S1. She recently had LESI's performed at multiple levels. This did help with her back pain. At the last visit, she was doing excellent and we went her back to regular duty at work. Today, she is doing great and has very little pain other than sitting or standing for long periods of time. Her pain is currently 2/10. She reports numbness and tingling of the bilateral lower extremities.

The Assessment and Plan section listed (1) inflammation of SI joint, (2) lumbar radiculopathy, (3) overweight, (4) herniation of nucleus pulposus of lumbar intervertebral disc, and (5) pain in coccyx. The note continued:

Discussion Notes

Sandra is doing great today and reports no pain whatsoever other than long periods of sitting or standing. She is very pleased with results of treatment, especially the benefit she got from the LESIs and physical therapy. Today, I

will transition her to a home exercise program [...]. I encouraged her to continue to utilize a heating pad daily. I will refill both her anti-inflammatory medication and muscle relaxers. I gave her an intramuscular injection of 60 mg Toradol today. I will release her from the clinic today, allowing her to continue regular duty at work. She is MMI today with PPI 0%.

[Cl. Ex. No 1 at 1-3.]

The claimant returned to the clinic on 8 January 2024. Her complaints were listed again as hip pain and low back pain. These complaints appear as the reasons for her visits across all of the appointments represented in the clinic notes made a part of this record. At those subsequent visits, her pain was consistently related to driving over long periods of time for work.

IV. ADJUDICATION

The stipulated facts are outlined above and accepted. It is settled that the Commission, with the benefit of being in the presence of a witness and observing their demeanor, determines a witness' credibility and the appropriate weight to accord their statements. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999). 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.*

A. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE IS ENTITLED TO ADDITIONAL MEDICAL TREATMENT.

The claimant believes that she is entitled to additional medical benefits beyond the treatment already provided. Employers must promptly provide medical services which are reasonably necessary in connection with the compensable injuries. A.C.A. § 11-9-508(a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996). A claimant may be entitled to additional treatment even after her healing period is ended, if that treatment is geared towards management of a compensable injury. *Patchell, supra*.

The respondents contend that the claimant fell and injured her left knee at while at work. They began providing benefits, including medical treatment coverage and TTD payments, thereafter. When she was released from care at MMI in November of 2023, all benefits were terminated.

The records do not suggest that the claimant's left knee injury required any management after her release from care at MMI. She testified extensively, if not almost exclusively, about experiencing additional pain related to her back and/or hips; but she did not provide direct testimony as to how her left knee required any additional treatment since her release from care. Nor was she specific about what particular treatment(s) she believed were reasonable and necessary for the treatment or maintenance of her left knee. The medical records presented begin at the date of her release and only relate to the claimant's subsequent concerns about hip and back pain.

The claimant has not shown that her left knee requires any reasonable or necessary treatment since her release from care and the cessation of benefits. Accordingly, the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical benefits.

B. THE CLAIMANT FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT SHE IS ENTITLED TO ADDITIONAL TTD BENEFITS.

The claimant's compensable left knee injury is a scheduled one. A.C.A. § 11-9-521(a)(4). An employee who has sustained a compensable scheduled injury is entitled to TTD benefits "during the healing period or until the employee returns to work, whichever occurs first" § 11-9-521(a). *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).

A claimant must prove her entitlement to TTD benefits by a preponderance of the evidence. A.C.A. § 11-9-705(a)(3). The credible medical evidence credibly establishes that the claimant's condition was stable on 20 November of 2023, when she was released from care at MMI. Indeed, she acknowledged that she reported feeling great to Mr. Pipkin. The preponderance of the evidence establishes that her healing period ended on that time. She provided no evidence supporting an ongoing entitlement to TTD benefits for her left knee injury after her release from care. Accordingly, her claim for additional TTD benefits must fail.

C. THE CLAIMANT IS NOT ENTITLED TO AN ATTORNEY'S FEE.

Consistent with the findings above, the claimant has failed to prove by a preponderance of the evidence that she is entitled to an attorney's fee.

V. CONCLUSION

Because the claimant failed to meet her burden of proof on any claim for additional benefits, this claim is DENIED and DISIMSSSED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE