BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G405501

THOMAS GREGORY, EMPLOYEE	CLAIMANT
CITY OF SPRINGDALE, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGE, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED SEPTEMBER 23, 2026

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE MARY K. EDWARDS, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed as Modified.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed June 10, 2026. The administrative law judge found that the claimant failed to prove he was entitled to requested medical treatment. After reviewing the entire record *de novo*, the Full Commission finds that the treatment received by the claimant from Dr. Wallace beginning March 19, 2025 was unauthorized and shall not be the responsibility of the respondents.

I. HISTORY

The record indicates that Thomas Benson Gregory, now age 60, became employed as a police officer with the respondents, City of

Springdale, in December 2005. Mr. Gregory's testimony indicated that he sustained a work-related left ankle sprain in 2013.

Dr. Konstantin V. Berestnev reported on October 31, 2013:

> At the request of and authorization by the City of Springdale, we are seeing Mr. Thomas Gregory. Mr. Gregory presents today for the injury from 10-22-2013. The patient states that he [was] in the ground fighting school for two days and injured his left ankle and got progressively worse. The patient complains of swelling and pain in the ankle. The patient states that he had previous injuries to his ankle while playing sports, but no surgeries….

Dr. Berestnev assessed "Left ankle sprain, overexertion from sudden strenuous movement, underlying multiple fractures in the left ankle and left distal tib/fib healed." Dr. Berestnev planned conservative treatment.

The parties stipulated that the claimant "sustained a compensable injury to his left ankle" on April 9, 2014. The claimant signed a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, on April 9, 2014. The ACCIDENT INFORMATION section of the Form AR-N indicated that the claimant injured his left ankle on April 9, 2014. The respondents' attorney cross-examined the claimant:

> Q. I am going to hand you what has been marked as Respondents' Exhibit 2, Page 1. And we talked about this a little bit in your deposition. That is the Form N and Notice of Injury. You confirmed in your deposition that you filled this out; is that correct?
> A. Uh-huh.
> Q. Is that a "yes"?
> A. Yes.
> Q. Okay. That's fine. I am just getting it down for the record.

A. I understand.
Q. And that is your signature at the bottom of that page?
A. Yes.

Dr. Jason Pleimann performed surgery on July 29, 2014: "Left ankle arthroscopy with extensive debridement." The post-operative diagnosis was "Left ankle impingement with left anterolateral talar dome grade 4 chondromalacia."

The claimant testified on direct examination:

> Q. Shortly after that surgery, did you sustain an injury to your right knee?
> A. Yes.
> Q. Can you tell us how that happened.
> A. Well, I couldn't stand on my – on my left ankle. Somehow, I mean when I was trying to shower and that, I had slipped and the right knee buckled underneath and that is when it happened….I was actually sitting in one of those chair things or whatever and that's – and I slipped while I was in that.
> Q. Okay. And did the respondents accept that injury to your right knee initially?
> A. I believe so.

The parties stipulated that the respondents "accepted as a compensable consequence an injury to the claimant's right knee."

The claimant treated at Mercy Clinic Lowell on August 19, 2014:

> Thomas B. Gregory is a 47 y.o. male here for eval of R knee pain – it started 2 weeks ago – he had L ankle sx and while protecting his L foot, which is in a boot fell in the bathtub and felt that his knee jarred. It swelled initially and he has been having pain with weightbearing, pain and burning sensation over the medial aspect and when turning his knee, has noticed decreased ROM with flexion.

A physician assessed "Knee pain, right" and referred the claimant to Dr. Christopher P. Dougherty at Arkansas Center for Arthroscopy, PA. Dr. Dougherty's assessment on September 15, 2014 was "Knee pain" and "Medial meniscus tear."

An MRI of the claimant's right knee was taken on July 24, 2015 with the following impression:

1. Torn posterior horn of medial meniscus.
2. Small joint effusion.
3. Mild degenerative arthrosis.

Dr. Dougherty noted on July 27, 2015, "He slipped into the bath after trying to lower himself into the bathtub after his ankle repair….His MRI shows a horizontal tear of the medial meniscus and plan is for repair vs. debridement. I will see him back for surgery."

Dr. Dougherty performed surgery on October 13, 2015: "Medial meniscus repair. Chondroplasty separately identifiable compartments x 2. Excision plica."

The claimant testified on direct examination:

> Q. Now, after that surgery, how was your knee?
> A. It wasn't the same. It still was giving me problems. It would still hurt. It still would swell up.

Dr. Dougherty noted on April 25, 2016, "His knee pain is back to square one and he notes pain and popping. Plan at this time is for repeat."

An MRI of the claimant's right knee was taken on May 5, 2016 with the following impression:

> 1. Small joint effusion with a nondisplaced tear involving the posterior horn of the medial meniscus.
> 2. Mild osteoarthritic degenerative changes with mild grade 2 chondromalacia involving the patella and medial femoral condyle.

Dr. Dougherty reported on May 9, 2016, "He continues to experience medial pain and his MRI suggests an incompletely healed segment. We injected his knee and he will continue with PT and I will see him back in 5 weeks."

Dr. Dougherty's assessment on or about June 15, 2016 was "1. Tear of medial meniscus of knee." Dr. Dougherty assessed the following:

> Pt is doing well. Having some IT [Band] tightness. He was instructed in stretching and Hip strengthening exercises. He will continue riding his bike for exercise and return as needed. He is at MMI. He will continue to have some discomfort over time due to his preexisting chondral changes. I will see him back as needed.

Dr. Dougherty planned the following on April 2, 2018: "He will be fitted for a medial off loader on the right knee. For his ankle he will be set up for left ankle arthroscopy with loose body removal and chondroplasty. We will see him back for surgery." Dr. Dougherty assessed "1. Tear of medial meniscus of knee – Right," "2. Articular cartilage disorder of ankle AND/OR foot," "3. Osteoarthritis of knee," and "4. Loose body in left ankle

joint." An x-ray of the claimant's right knee on April 2, 2018 showed "Medial joint space narrowing with early osteophyte formation."

The respondents' attorney cross-examined the claimant:

> Q. Now, you did not see Dr. Dougherty from April 2, 2018 to present; is that correct?
> A. That is correct.
> Q. Okay. And I believe you just testified, but I also want to confirm this, that you have not seen – you did not see a physician for your right knee from about 2018 until about 2025. Does that sound about right?
> A. Yes….
> Q. And when you did seek out a physician, you did not contact anybody from the Arkansas Municipal League about it; did you?
> A. No.
> Q. Okay. And you essentially told me in your deposition that you sought out this medical treatment on your own because you were not aware that you essentially needed to go through the process. Is that a fair statement?
> A. That is a fair statement, yes.

The record indicates that the claimant presented for treatment at NEA Baptist Clinic Orthopedic Surgery on March 19, 2025:

> Patient is a 58-year-old male who is here for evaluation of right knee pain. X-rays independently reviewed demonstrates he does have bone-on-bone arthritis of the
> right knee. Patient reports steroid injections have given minimal symptom relief in the past. Would like to forego steroid injection today but will give home exercise program. Will return here in 6 months for re-evaluation.

Dr. Aaron Jack Wallace's impression on March 19, 2025 was "1. Other unspecified arthritis, right knee. 2. Chronic pain of right knee."

Dr. Wallace saw the claimant on September 17, 2025:

> The patient is a 59-year-old male who presents for evaluation of right knee pain. His last visit was on 03/19/2025, during which he reported right knee pain due to bone-on-bone degenerative joint disease (DJD). He opted out of a knee injection at that time, as previous injections administered at another institution provided minimal relief.
> He has a history of meniscus surgery, which unfortunately resulted in a retear. This was followed by an incident where his knee suddenly locked up, causing significant pain and instability. He believes that the remaining meniscus may have shifted between the ligaments. Currently, he experiences swelling in the knee, which disrupts his sleep due to discomfort during movement. He finds it difficult to sleep with his leg straightened out and prefers to keep it bent. He also struggles with extending his leg fully, a problem that has persisted for several years. He reports that his knee swells up after walking long distances, such as during a recent trip to Yellowstone.
> Additionally, he mentions an injury to his ankle, which he believes has resulted in cartilage loss. He is considering replacement surgery for this issue as well. He is under workmen's compensation and was retired from the police department due to this injury. Dr. [Dougherty] in [Bentonville] did all the procedures on his knee for workmen's compensation, but they did not keep his file open. He receives annual updates from them. He plans to contact Dr. [Dougherty] and have him reach out to us. He is curious about the earliest possible scheduling for the knee procedure. He is considering scheduling the procedure for mid-November 2025, after his wife's sinus surgery.

Dr. Wallace's assessment on September 17, 2025 was "1. Right knee pain: Mechanical symptoms in the right knee, including popping, clicking, and locking, suggest loose cartilage or meniscus. Previous injections provided minimal relief. A knee scope to clean up the joint was discussed as a potential treatment option for these mechanical symptoms, but it will not alleviate arthritis pain. Given the age of 59 years and the

presence of arthritis behind the kneecap, a total knee replacement is recommended….He was advised to contact his work comp case manager for approval of the procedure."

A pre-hearing order was filed on February 11, 2026. The claimant contended, "Claimant contends he is entitled to surgery for his right knee as recommended by Dr. Aaron Jack Wallace, and to temporary total disability benefits from 9-17-25 to a date yet to be determined. Claimant reserves all other issues."

The respondents contended, "Respondents contend claimant sustained an initial injury to his left ankle on April 9, 2014. During his recovery, he began having problems in his right knee. Respondents accepted the right knee as a compensable consequence to his left ankle injury and paid for medical treatment. Claimant primarily saw Dr. Christopher Dougherty for his right knee. Dr. Dougherty performed surgery on October 13, 2015. Following extensive physical therapy, on June 15, 2016, Dr. Dougherty placed claimant at MMI and assigned a two percent (2%) impairment rating to his right knee. In that visit note, Dr. Dougherty opined claimant will continue to have some discomfort over time, but he related this to preexisting issues in his right knee. Respondents are not aware of claimant receiving medical treatment between June 15, 2016, and September 17, 2025, the date claimant first saw Dr. Wallace."

The respondents contended, "Respondents contend that claimant cannot prove by a preponderance of the evidence the medical treatment by Dr. Wallace beginning on September 17, 2025, is reasonably necessary and causally related to his compensable workers' compensation injury. Furthermore, this medical treatment by Dr. Wallace was unauthorized medical treatment under the Act; therefore, respondents should not owe it. Respondents contend they should not owe any temporary total disability benefits since the medical treatment by Dr. Wallace was not reasonable, necessary, and causally related to claimant's compensable workers' compensation injury. Additionally, claimant has not reentered a healing period since he was placed at MMI on June 15, 2016, by Dr. Dougherty. Respondents further contend that claimant has medically retired and is currently receiving LOPFI disability benefits. Pursuant to Ark. Code Ann. 11-9-411, respondents are entitled to a dollar-for-dollar offset on any temporary total disability benefits that may be assigned. Respondents further reserve [the] right to file an Amended Response to the Prehearing Questionnaire or other appropriate pleading and to allege any further affirmative defense(s) that might be available upon further discovery."

The parties agreed to litigate the following issues:

1. Whether medical treatment from Dr. Aaron Wallace is authorized.
2. The claimant's entitlement to additional medical treatment; including right knee surgery recommended by Dr. Wallace.

> 3. Temporary total disability benefits from September 17, 2025, to a date yet to be determined.
> 4. The respondents' entitlement to an offset for payment of temporary total disability benefits based on LOPFI retirement benefits.
> 5. Attorney's fee.

A hearing was held on April 22, 2026. At that time, the parties reserved the issues of temporary total disability benefits and statutory offset. The claimant testified that he had not undergone surgery recommended by Dr. Wallace. The claimant testified that the condition of his right knee was progressively worsening.

An administrative law judge filed an opinion on June 10, 2026. The administrative law judge found, in pertinent part:

> 4. That the claimant has failed to satisfy his burden of proof to prove by a preponderance of the credible evidence that the medical treatment he requested, treatment by Doctor Wallace and specifically a right knee replacement, is causally related to the treatment for the compensable right knee injury and within the statutory time-period to make said claim….

The claimant appeals to the Full Commission and moves to supplement the record.

II. ADJUDICATION

The administrative law judge found, among other things, that the claimant did not request additional medical treatment "within the statutory time-period to make said claim." The claimant correctly states on appeal that the parties did not expressly agree to litigate the applicable statute of

limitations in accordance with Ark. Code Ann. §11-9-702(Repl. 2012). The claimant therefore moves to supplement the record with various exhibits. The respondents inform the Full Commission that they "take no position on this matter and leave the decision up to the Commission on whether or not to admit the additional evidence." The Commission shall not be bound by technical or statutory rules of evidence but may make such investigation in a manner as will best ascertain the rights of the parties. Ark. Code Ann. §11-9-705(a)(1)(Repl. 2012). The Commission should be more liberal with the admission of evidence rather than more stringent. *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001).

The Full Commission in the present matter therefore grants the claimant's motion to supplement the record. We hereby supplement the record with the exhibits attached to the claimant's brief: Exhibit A-1, Exhibit A-2, Exhibit A-3, Exhibit A-4, Exhibit B-1, Exhibit B-2, and Exhibit B-3.

A. Change of Physician/Authorization

Ark. Code Ann. §11-9-514(Repl. 2012) provides, in pertinent part:

> (c)(1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the commission, which explains the employee's rights and responsibilities concerning change of physician.
> (2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

> (3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

The Workers' Compensation Commission is obliged to strictly construe and apply this provision. *See* Ark. Code Ann. §11-9-704(c)(3)(Repl. 2012); *Delargy v. Golden Years Manor*, 2014 Ark. App. 499, 442 S.W.3d 889.

The parties in the present matter expressly agreed to litigate the issue, "1. Whether medical treatment from Dr. Aaron Wallace is authorized." The Full Commission finds that current medical treatment from Dr. Wallace was not authorized and shall not be the responsibility of the respondents. The parties stipulated that the claimant sustained a compensable injury to his left ankle on April 9, 2014. The record includes a Form AR-N, EMPLOYEE'S NOTICE OF INJURY, signed by the claimant on April 9, 2014. The claimant agreed on cross-examination that he filled out and signed the Form AR-N which was included in the record. The Form AR-N included the following explicit language: "My signature below also indicates that I have been provided with my rights regarding change-of-physician."

The claimant agreed on cross-examination that he did not treat with the authorized physician, Dr. Dougherty, after April 2, 2018. The claimant began seeking unauthorized treatment from Dr. Wallace on March 19,

2025. Because the claimant was manifestly apprised of the change-of-physician rules, said treatment beginning March 19, 2025 was unauthorized and shall not be the responsibility of the respondents.

After reviewing the entire record *de novo*, the Full Commission finds that treatment provided by Dr. Wallace beginning March 19, 2025 was unauthorized in accordance with Ark. Code Ann. §11-9-514(Repl. 2012). Said treatment shall not be the responsibility of the respondents. We note that the claimant has not filed a statutory request for a change of physician. The Full Commission therefore affirms the administrative law judge's opinion as modified.

IT IS SO ORDERED.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

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MICHAEL R. MAYTON, Commissioner