

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G908131

PEARL HOFFMON, Employee	CLAIMANT
PIZZA HUT, Employer	RESPONDENT
OLD REPUBLIC INSURANCE CO., Carrier/TPA	RESPONDENT

OPINION FILED NOVEMBER 22, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by RICK BEHRING, JR., Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 8, 2021, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 1, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties on December 7, 2019.
3. The claimant sustained a compensable left knee injury on December 7, 2019.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$124.00 for total disability benefits and \$124.00 for permanent partial disability benefits.

5. Respondents accepted and paid permanent partial disability benefits based on a 3% rating to the left lower extremity.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Claimant's entitlement to surgery as recommended by Dr. Arnold.
2. Temporary total disability benefits.
3. Attorney fee.

The claimant contends that the surgery recommended by Dr. Arnold is reasonably necessary and that the respondents should be ordered to authorize and pay for said surgery. The claimant contends that she is entitled to temporary total disability benefits from the date of surgery until a date yet to be determined and reasonably necessary medical treatment. The claimant contends that the respondents have controverted her entitlement to the recommended surgery and that therefore her attorney is entitled to an appropriate attorney's fee.

The respondents contend that they have accepted the left knee injury as compensable and have provided all appropriate medical and indemnity benefits. The respondents have paid for all reasonable and necessary medical treatment relating to the compensable left knee injury and that claimant reached MMI with no work restrictions and no recommended treatment on November 24, 2020. Claimant subsequently participated in a functional capacity evaluation and was assigned a 3% permanent anatomical impairment rating to the left lower extremity which respondents accepted and paid. The

claimant requested and received a change of physician to Dr. Chris Arnold, and respondents accepted and paid for the change of physician visit. On or about June 1, 2021, Dr. Arnold recommended surgery based upon a meniscus tear that does not appear to have been previously identified in an MRI (December 18, 2019) or surgical procedure (August 11, 2020). The respondents have provided all appropriate temporary total and permanent partial disability benefits as a result of the compensable left knee injury sustained on December 7, 2019. The respondents have not yet controverted any benefits. In the alternative, if it is determined the claimant is entitled to any additional indemnity benefits, the respondents hereby request a set off for all benefits paid by the claimant's group health carrier, all short and long term disability benefits received by the claimant and all unemployment benefits received by the claimant.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on September 1, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to surgery as recommended by Dr. Arnold.

FACTUAL BACKGROUND

Claimant worked for respondent and her job duties included delivering pizza as well as making pizza, prepping, and cleaning at respondent's store. Claimant suffered an admittedly compensable injury to her left knee on December 7, 2019. On that date the claimant had made a delivery at an apartment complex and as she was returning to her car her foot got caught underneath a cement car stop causing her to fall down, hit her knee, and twist it.

Claimant reported her injury to respondent and was seen at the emergency room that same day. The medical record indicates that claimant was diagnosed as suffering from acute pain of the left knee and she was given medication for pain.

On December 11, 2019, claimant was evaluated by Dr. Terry Clark. Dr. Clark noted that an x-ray of the claimant's knee revealed moderate effusion, but no bony injury. He recommended that claimant undergo an MRI scan of her left knee. The MRI scan was performed on December 19, 2019, which revealed the following:

Impression:

Severe bone marrow edema involving the proximal tibia anteriorly located on both sides worse on the medial side. This is most likely due to bone bruises.
Moderate joint effusion.

Significantly, the MRI report also indicates that the claimant's medial meniscus was intact. Dr. Clark continued to treat claimant conservatively with physical therapy, medications, and the use of a knee brace.

Claimant eventually came under the care of Dr. Trent Johnson, orthopedic surgeon, who first evaluated the claimant on February 28, 2020. At that time Dr. Johnson

recommended that claimant continue her physical therapy, use of medications, and a knee band. In a report dated June 11, 2020, Dr. Johnson noted that claimant suffered from plica which had been exacerbated as a result of her injury and was failing to respond to conservative treatment. As a result, Dr. Johnson recommended a knee arthroscopy for diagnostic purposes. He also stated:

We will plan resection of plica and also debridement of the fat pad if there is any fat pad impingement noted.

Dr. Johnson performed the surgery on August 11, 2020. His operative report of that date indicates that he performed a left knee arthroscopy with resection of fat pad as well as resection of the left knee plica. Dr. Johnson's operate report indicates that during the arthroscopic procedure he viewed the various parts of claimant's knee including the medial meniscus which he noted was intact.

Following claimant's surgery, she continued to complain of her left knee to Dr. Johnson. In his report of November 24, 2020, Dr. Johnson noted that claimant continued to have some pain in her knee but she denied any swelling or mechanical symptoms. Dr. Johnson opined that claimant had reached maximum medical improvement and indicated that: "No further treatment should be required." He also referred claimant for a functional evaluation for the purpose of assigning an impairment rating. Claimant underwent an evaluation at Functional Testing Centers in Mountain Home and was assigned a rating in an amount equal to 3% to the left lower extremity.

Following her release by Dr. Johnson, claimant filed for and received a change of physician to Dr. Chris Arnold. Dr. Arnold's initial evaluation occurred on April 6, 2021 at which time he indicated that claimant's symptoms suggested a medial meniscus tear and

ordered a second MRI scan. The second MRI scan was performed on May 5, 2021, and was interpreted as showing a medial meniscus tear.

In a report dated June 1, 2021, Dr. Arnold noted that the MRI scan had findings of a medial meniscus tear. Based upon that finding, Dr. Arnold recommended a knee arthroscopy.

Respondent denied liability for the surgery purposed by Dr. Arnold and claimant has filed this claim contending that she is entitled to the surgery as recommended by Dr. Arnold. She also requests temporary total disability benefits associated with that surgical procedure.

ADJUDICATION

Claimant contends that she is entitled to additional medical treatment in the form of surgery as recommended by Dr. Arnold. An employer is to promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508(a). Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has failed to meet her burden of proof.

First, I note that during questioning, there was some indication that Dr. Arnold was not recommending a surgical procedure, but instead was simply recommending additional

observation. I find from reviewing the totality of Dr. Arnold's June 1, 2021 report that he was recommending surgery in the form of a knee arthroscopy. Specifically, Dr. Arnold stated:

Plan: Order Surgery: Knee Arthroscopy.

Dr. Arnold furthermore indicated that the timeframe for the procedure would be one month. Thus, there appears to be no question that Dr. Arnold is recommending an arthroscopic procedure on the claimant's left knee. The issue for consideration is whether this recommended treatment is reasonable and necessary.

Dr. Arnold has recommended that claimant undergo a left knee arthroscopic procedure due to the May 21, 2021 MRI scan which was read as showing a medial meniscus tear as well as his examination of the claimant's knee which supported his diagnosis of a medial meniscus tear.

In response to Dr. Arnold's recommendation for an arthroscopic procedure, respondent had claimant evaluated by Dr. Mark Allard. Dr. Allard is an orthopedic surgeon who evaluated the claimant on September 2, 2021. As a result of that evaluation Dr. Allard authored a report and answered various questions. First, I believe it is significant to note that Dr. Allard not only conducted a physical examination of the claimant, but he also reviewed medical records from Dr. Clark, Dr. Johnson, and Dr. Arnold. He also reviewed both of claimant's MRI scans.

Although the second MRI scan was interpreted as showing a medial meniscus tear, Dr. Allard stated that his review of both MRI scans revealed that there were no new findings on the second MRI scan and that there was no evidence of a medial meniscus

tear. Specifically, Dr. Allard stated:

It is my impression that Ms. Hoffman has persistent left knee pain and buckling secondary to deconditioning and muscle atrophy. She does have medial joint line tenderness, but has no pain with meniscal provocative tests. I do not believe that the changes in the posterior horn of her medial meniscus on her new MRI a [sic] different than the changes looked on her previous MRI. She has had an arthroscopic exam that showed no evidence of medial meniscus tear and I believe a repeat arthroscopy is unlikely to give her lasting relief from her symptoms. An aggressive strengthening program, which could be supplemented by intra-articular steroid injection, would be likely to improve her symptoms than a repeat surgery.

Significantly, Dr. Allard is not only relying upon his interpretation of the two MRI scans, but he is also relying upon the operative report of Dr. Johnson who performed a diagnostic arthroscopy procedure on August 11, 2020. Dr. Johnson's operative report contains the following findings:

Notch showed the ACL was intact to visualization and probing. Lateral compartment showed no signs of chondromalacia. Lateral meniscus was intact. The patient's medial compartment showed no signs of chondromalacia. The medial meniscus was intact. (Emphasis added.)

According to Dr. Allard, the diagnostic arthroscopy is the gold standard for diagnosing a meniscal tear as opposed to an MRI scan. Here, claimant's medial meniscus was intact during the diagnostic arthroscopic procedure on August 11, 2020.

Thus, based upon his belief that a medial meniscus tear does not exist, Dr. Allard has opined that surgery will not be beneficial. I find that Dr. Allard's opinion is credible and entitled to great weight. Dr. Allard not only examined claimant but he also reviewed

the medical records of Drs. Clark, Johnson, and Arnold.

In addition, I note that even if one were to assume that claimant does have a medial meniscus tear, she has the burden of proving by a preponderance of the evidence that any such tear is causally related to the accident on December 7, 2019. Here, an MRI scan taken twelve days after that fall revealed that her medial meniscus was intact. More importantly, claimant underwent a diagnostic arthroscopic procedure by Dr. Allard on August 11, 2020, and Dr. Johnson observed that claimant's medial meniscus was intact. Therefore, even if one were to assume that claimant does have a medial meniscus tear as diagnosed by Dr. Arnold, claimant has failed to prove by a preponderance of the evidence that that tear is causally related to the injury of December 7, 2019. The tear did not exist at the time of the diagnostic arthroscopic procedure by Dr. Johnson on August 11, 2020, and there is insufficient credible evidence of record linking a new medial meniscus tear to her compensable injury.

Finally, it should be noted that Dr. Allard did not opine that claimant is not in need of any additional medical treatment. Dr. Arnold is recognized as claimant's authorized treating physician and she is entitled to return to him for any continued treatment causally related to her compensable left knee injury. However, she has failed to prove by a preponderance of the evidence that that additional medical treatment would include the surgery recommended by Dr. Arnold.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery as recommended by Dr. Arnold.

Therefore, her claim for approval of that surgery is hereby denied and dismissed.

Respondent is responsible for paying the court reporter's charges for preparation of the hearing transcript in the amount of \$285.40.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE