

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H203241**

SARAH L. HOOTEN, Employee CLAIMANT

CENTRAL ARKANSAS NURSING CENTERS INC., Employer RESPONDENT

ESIS INC., Carrier RESPONDENT

OPINION FILED **MARCH 2, 2023**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by ERIC NEWKIRK, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 9, 2022, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 25, 2022 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 this claim.
2. The employee/employer/carrier relationship existed on December 22, 2021.
3. The respondents have controverted the claim regarding claimant's left knee.
4. The compensation rates are \$402.00 for temporary total disability and \$302.00 for permanent partial disability.

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

1. Whether claimant sustained a compensable injury regarding her left knee.

2. If compensable, is claimant entitled to a total knee replacement and indemnity benefits associated therewith.

All other issues are reserved by the parties.

The claimant contends that:

“a. That as the result of her admittedly compensable injury to her knee she is entitled to a total knee replacement and indemnity benefits associated with that knee replacement.

b. The claimant further contends that the knee replacement has been controverted and therefore, for any indemnity benefits associated with that knee replacement have been controverted and an award of such benefits will entitle her to an appropriate attorney’s fee.”

The respondents contend that:

“1. That the claimant did not sustain a compensable left knee injury as a result of a purported work incident on December 22, 2021. The respondents contend that there are no objective medical findings of a related left knee injury on December 22, 2021, and the claimant made no complaints pertaining to her left knee on or about December 22, 2021.

2. Alternatively, to the extent the claimant has any objective medical findings in existence pertaining to her left knee, those findings would be traceable to the claimant’s preexisting left knee abnormalities and treatment she had already been receiving in connection with her left knee. Thus, any objective medical findings, to the extent they exist, would not be causally connected to the work incident/event.

3. By way of further alternative defense, the respondents contend that even if objective findings are somehow determined to exist which are traceable to a work incident/event on December 22, 2021, those findings would be minimal in nature and a minor temporary aggravation of claimant’s preexisting left knee condition. Any needed medical treatment to restore the claimant to her baseline condition as it related to the temporary aggravation would be minimal in nature and certainly not an

invasive, extensive procedure such as a total knee replacement. Respondents contend that the claimant's need for a total knee replacement is causally connected to her preexisting left knee abnormalities and not traceable, in whole or in part, to the underlying alleged December 22, 2021 work incident/event.

4. By way of final alternative defense, the respondents assert an offset for any group insurance benefits paid in any form or nature to or on behalf of the claimant, as well as an offset for any unemployment benefits paid to the claimant, to the extent allowed under Arkansas law.

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 witnesses and to observe their 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 August 25, 2022, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable injury to her left knee on December 22, 2021.

FACTUAL BACKGROUND

Following the hearing, the parties were asked if they wanted to each submit a brief in support of their position. Both declined, but subsequently, claimant requested that the parties submit post-trial briefs. That request was granted. The email exchange after the hearing and the brief filed by claimant are blue backed to the record; respondent did not submit a post-hearing brief.

HEARING TESTIMONY

The claimant called two witnesses before she testified. Jordan Gump stated she was working with claimant on December 22, 2021, when she heard a resident calling out for help. She and claimant

began running and claimant fell in front of Ms. Gump, hitting her entire left side on the floor, including her shoulder, hip, knee, and foot. She helped claimant get back to her feet but did not recall claimant voicing a complaint about any part of her body being injured at that time. A day later, Ms. Gump was working with claimant and noticed that she was limping and heard her complain about her knee hurting.

On cross-examination, Ms. Gump said that she did not see claimant limping before December 22, 2021. She had noticed that when walking, claimant “waddles in general” but she noticed a difference in how she was walking after she fell. Ms. Gump did not recall claimant complaining about her knee hurting before December 22 or having her job modified because of her left knee.

Susan Willhite was called by claimant. She said that she was working in the area where claimant fell to the floor and saw claimant when she returned from the doctor. Ms. Willhite testified claimant said her knee was hurting and Ms. Willhite noticed that claimant was limping. Ms. Willhite had seen her limp like that before some months earlier. Ms. Willhite said that she had talked to claimant before the accident happened in the restroom or break room and was aware that claimant had knee problems. When shown her deposition testimony where she was asked if claimant was complaining of pain, Ms. Willhite read where she stated, “just her knee”, but when asked at the hearing:

Question (by Mr. Walker) So was it clear to you that she was complaining about having injured her knee when she fell?

A. I don't know. I am confused here.

Q. Well it's a pretty straight forward question, ma'am. I asked you about the accident and you said – I asked you “did you see her actually fall?” You said “yes.” I said, “do you recall what part or parts of her body actually hit the floor?”

A. “Her knee.”

Q. Then I asked –

A. I think the whole body.

Q. Then I asked you “Do you recall her complaining of any pain or complaining that she thought she was injured in anyway?” Now I would have been referring to the incident; wouldn't I?

A. Uh-huh.

Q. And your answer was, "Just the knee".

A. Uh-huh.

Ms. Willhite then said that she didn't know if claimant was complaining about knee pain when she returned from the doctor on the night of the accident because she just briefly passed her when she got back. She said she didn't talk to claimant when claimant returned from the doctor. At that point, Ms. Willhite's deposition was proffered as an exhibit and the testimony in the deposition will be summarized below.

On cross-examination, Ms. Willhite admitted that she was a little foggy on when claimant started complaining about her knee. Ms. Willhite thought it might have been in January, then at one point said December, but admitted that she didn't really know. She knew claimant had gone on Christmas vacation in South Carolina. Ms. Willhite was aware that claimant had prior knee problems but was not aware of a July 14, 2020, work incident. She had noticed claimant was limping when she came back from the doctor on December 22, 2021, but that was not anything different, because she had seen claimant limping all the time.

On redirect-examination, Ms. Willhite said that she had seen claimant limping for quite some time but had never discussed it with claimant.

Ms. Willhite's deposition was taken four days before the hearing. She said she had known claimant for eight years and recalled the accident of December 22, 2021. She said claimant tripped on her own feet because there was nothing there. She saw claimant fall but did not remember what parts of her body hit the floor. She recalled claimant complaining of pain in her knee but did not remember which knee. She didn't recall anything else being said about the knee because claimant was sent to the doctor after it happened. She didn't know if anyone else was around to see the fall, including Jordan Gump. Ms. Willhite said she was the one that helped claimant up from the floor. Ms. Willhite said she was passing out linen and just happened to be there at the time of the fall. Ms. Willhite thought

claimant didn't act like she was really hurt, but more embarrassed. After she returned from the doctor, she said her knee was hurting. She didn't know anything about claimant's medical condition before the fall.

On cross-examination in the deposition, Ms. Willhite said she didn't know for sure if claimant told her something about the knee on December 22 or if it was a different day. She did see claimant wearing a knee brace but didn't know if that was in January when she started doing that. There was then this exchange with respondent's counsel:

Question (by Mr. Newkirk) I need to know can you testify under oath that she told you her knee was hurting that day at the time of that incident.

A. She did tell me; yes, when she got back; yes.

Q. You say, "when she got back." That's what I am saying.

A. Yeah.

Q. When you helped her up, did she say anything about it?

A. No.

Q. And when she got back – do you know if you saw her in December or in January when she got back?

A. See I don't know. I don't know when it was.

Q. You just know at some point you saw her again –

A. Right.

Q. – after the incident, she mentioned her knee was hurting?

A. (No response)

Q. Is that right?

A. Right.

Q. It could have been in December; it could have been in January?

A. Right.

On redirect examination, Ms. Willhite clarified that she saw claimant fall and knew that she went to the doctor on that same day. She knew that claimant came back to the nursing home that

same day and said that her knee got messed up. Ms. Willhite said that she had seen claimant when she got back on the same day.

On recross examination, the following exchange took place between Ms. Willhite and respondent's counsel:

Question (by Mr. Newkirk) Well, what you are telling us is one thing to Mr. Walker and you are telling me two different things. You are telling Mr. Walker that on that day – she came back in there that day on December 22 and she complained to you about her knee and she was limping and wearing a thing?

A. Uh-huh.

Q. – and you know it was that day, but yet you tell me –

A. It was that day she did come back because she had to give the nurse the slip for going; yeah.

Q. So it wasn't in January?

A. No, no it was right after it happened.

Claimant testified that on December 22, 2021 she fell at work when she was going to look for someone that was yelling for help. She went to the doctor and returned to work because the doctor did not take her off duty. She said she first realized her knee was injured on the same night when she was walking to give a person a shower but did not report it that night. She believed she first mentioned that her knee was hurting on the third or fourth day after the fall. Claimant had time off work during the Christmas vacation and then returned after her trip. She said when she returned to work, her knee was swollen and “hurting like crazy”. She went to see the doctor at Arkansas Occupational Health, the facility where she was sent by the HR director. Claimant did not recall if she said at the time that the knee was hurting because of the fall.

Claimant stated when she was at the emergency room the night of the fall, the emergency room doctor did not x-ray her knee because he did not have an order to do that. She understood that the incident report that she filled out listed problems with her left shoulder and left hip but said nothing about her left knee. Claimant said that at the time that she filled out the form, her hip and

shoulder were really bothering her, but her knee didn't start hurting until three days afterwards. When asked why she testified in a deposition that her knee was bothering her when she went to the emergency room, she said it was possible that she got that incident mixed up with a previous fall that she had. She said she was very nervous during the deposition and nervous while she was testifying, which causes her to become forgetful. It was established that the previous fall she referred to was in July 2020. Claimant said that her knee hurt worse after the December 22, 2021 accident. Claimant stated that she was not wearing a brace on her knee at the time of the December 22, 2021 accident, but was given one following that fall. Claimant said that she continued to work at the nursing home after the July 2020 accident and was released from active treatment. She did not return to the doctor for any additional treatment on her knee prior to December 22, 2021, because she believed there was nothing else that could be done for her.

On cross-examination, claimant agreed that some of the testimony she gave in her deposition was wrong because she was nervous. Claimant said the doctor that was treating her would not send her to an orthopedic doctor because the bone chips under her kneecap were nothing that could be helped with surgery. She said that her knee problems continued to worsen, and she now was seeking a total knee replacement. When shown the records from 2015 when she had a venous Dopplar study of her left leg, claimant did not remember that taking place. She did recall having an MRI for low back issues but did not recall completing a form in July 2020 in which she said that she "had water under my kneecap" before the July 2020 fall. When asked if she told anyone following the December 22, 2021, fall that her left leg had just buckled and gave out as she was walking, claimant maintained that she did not remember saying that to anyone.

The following exchange took place in claimant's deposition:

Question (by Mr. Newkirk) What about your left knee?

A. Well that's – it popped.

Q. So it didn't feel like it was bruised. It felt worse?

A. Yes.

Q. So you knew instantly that something was wrong with your left knee worse than just a bruise?

A. Yes sir.

Q. Like within three minutes?

A. Yes sir.

Claimant denied that was accurate, and said it was three days afterwards when she started having problems with her knee, but then said it might have been even later. Claimant was adamant that she did not have any knee problems while she was on vacation, maintaining it was after she returned.

The following testimony took place:

Question (by Mr. Newkirk) OK. So actually, it was January, then, when you started developing your problems after you got back from your trip?

A. I don't remember exactly.

Q. Well you got back about January 3. I think that's what you testified to. Does that sound about right?

A. That sounds about right.

Q. You were out there for a week?

A. Yes.

Q. Then when you came back to Arkansas you started having problems?

A. After I started working.

Q. OK. After you started working?

A. Yes.

Q. So you started doing your shift and started having problems and went to see if they would let you go get some treatment for the knee?

A. Yes.

Q. OK. So that is even different than what you told me earlier because it wasn't within three or four days, it was more like twelve to fourteen days, right?

A. I think so.

Q. So in your deposition when you told me it happened immediately, within seconds

and you knew, that is wrong; right?

A. Yes. I got nervous.

When shown the ARN form that claimant filled out on December 22, 2021, she conceded there was nothing on it about her knee because that didn't happen until sometime in January.

When asked about her statement in the deposition that her knee complaint was not treated in the emergency room, claimant said that she asked why they weren't checking her knee.

And then the following exchange took place:

Question (by Mr. Newkirk) So you felt like – again there wouldn't have been a need to check it, right, because you didn't have knee problems from December 22, until January; right?

A. Well I asked because I think since they were checking my shoulder and hip, they should check my knee too, just to make sure it was alright, that's why I was asking.

Q. OK and again, you didn't have additional knee problems until January?

A. Right.

On redirect-examination, claimant said she didn't do anything during her trip to see her grandchildren to injure her knee.

On questioning from the court, the following exchange took place:

Question (by the Court) Ms. Gump testified she saw you limping either that night or within the next couple of days. Do you remember hearing her say that?

A. Yes sir.

Q. But you just told us you didn't have any trouble with the knee until January, is that right?

A. Yes sir.

Following that exchange with me, the claimant said she had been limping "ever since I fell the first go around."

Then there was this exchange with her attorney:

Question (by Mr. Walker) How soon after you fell did it get worse?

A. About three days later.

Q. You understand that when you are answering my questions you are telling us it got worse within days and when you are answering Mr. Newkirk's questions,

you are saying it got worse in January.

A. It kept on getting worse from the third day and it didn't get any better.

Respondent called Amanda Burton, the director of nursing at Alma Nursing and Rehab, who is claimant's direct supervisor. She was not present on December 22, 2021, when claimant fell but did receive a call from the charge nurse that evening, alerting her of the fall. She saw claimant on a day-to-day basis and prior to December 22, 2021, she had noticed that claimant had a limp regarding her left leg and had also complained about claimant's left knee. Ms. Burton said that claimant's job had been modified because "she wasn't able to keep up with call lights and stuff, so we had made it where she did a lot of the vitals, pass the ice. Did a lot of the other things that the aides – so the aides could do most of the care." She next saw claimant on January 5, 2022, when claimant returned from vacation. When claimant was asked about what had happened, claimant said she was going to do something and while going down the hall her knee gave out.

On cross-examination, Ms. Burton said she had not reviewed the paperwork that had been completed the night of the incident but had just asked claimant how she was doing because claimant was limping. She believed this limp was worse than it had been before the incident on December 22, 2021. Ms. Burton did not inquire as to whether claimant had done anything during her vacation to hurt her knee, she had simply noticed that claimant's gait was worse, and she asked how she was doing. When claimant said her knee was hurting, Ms. Burton sent her to see the human resources director to make an appointment with a doctor about her knee.

On redirect-examination, Ms. Burton said that because the knee injury seemed to be work related, she sent her to human resources. She didn't know if a knee buckling or giving out was compensable and that was not for her to decide.

Respondents then called Kristina Martens, the lead CNA at Alma Nursing. She had known claimant for six years and worked alongside her. Ms. Martens believed that she was claimant's direct

supervisor, as claimant was to bring any problems to her and then to Amanda Burton if necessary. Ms. Martens described the way claimant walked as “she hobbles” because of her knee, and had done so prior to December 22, 2021. She knew that claimant had accommodations at work of a light duty nature, which had begun before December 22, 2021. Ms. Martens was not present when the accident took place and did not see claimant again until after claimant returned from vacation. At that time, claimant told Ms. Martens that “she was walking down the hallway and her knee buckled and she fell.”

On cross-examination, Ms. Martens said she had not seen the incident report and did not know what claimant had said about how the accident had taken place. She said that she had seen claimant wearing a brace on her knee after the fall in December 2021.

REVIEW OF THE EXHIBITS

The medical records revealed little that was not previously discussed during the testimony. Claimant went to the emergency room on December 22, 2021, where she was examined for shoulder and hip injuries. Consistent with claimant’s testimony, there was no record of her knee being examined.

Claimant next was seen by Cynthia Johnson, APRN, at Arkansas Occupational Medicine Services on January 11, 2022. This is consistent with her testimony that when she returned from her vacation, she reported that her knee was hurting, and an appointment was scheduled for her at that facility. X-rays were ordered and there were no acute findings or obvious fractures, but additional imaging was ordered due to claimant’s presentation.

The diagnosis was:

1. Sprain of unspecified site of left knee, initial encounter.
2. Fall on same level from slipping, tripping, and stumbling with subsequent striking against unspecified object, initial encounter.

At that visit, claimant reported that her left knee began hurting and swelling a few days after her injury. She was put on restrictive duty which included no lifting, pushing, pulling in excess of ten pounds and she was to stand, sit, and walk as tolerated.

An MRI was performed on February 8, 2022, and the impression was:

1. Moderate medial joint space degenerative change with cartilage loss and marginal osteophytes and marrow edema-type changes femur greater than tibia and with medial meniscus tear.
2. Joint effusion.
3. Small central anterior horn lateral meniscus tear.

Following the MRI claimant was referred to Mercy Clinic River Valley Muscular Skeletal Center. She was scheduled for a knee arthroplasty total replacement on May 3, 2022, but that surgery did not occur. There were no office notes or other information from the surgeon that was going to perform the operation, Dr. Timothy Garlow, regarding his examination of claimant.

Respondent introduced several records that predated the fall of December 22, 2021. The most applicable one was the MRI of claimant's left knee from July 24, 2020. The impression at that time was:

1. Findings suggestive of microfractures and bony contusion of the inferior patella.
2. Moderate suprapatellar joint effusion
3. Tricompartmental osteoarthritis, most pronounced at the medial compartment.
No definite tear of the menisci or cruciate ligaments.

ADJUDICATION

In order for claimant to prevail in this matter, she was required to show: (1) that she suffered an injury arising out of and in the course of her employment; (2) that the injury was caused by a specific incident; (3) that the injury caused internal or external physical harm to her body; (4) that the injury is supported by objective findings; (5) that the injury was the major cause of the disability or need for medical treatment. Ark. Code Ann. § 11-9-102. I find claimant failed on her burden of proof on the first and fifth factor listed.

In reviewing the testimony provided by those witnesses other than claimant, I found Jordan Gump to be credible; however, the portion of Ms. Gump's recollection which was most beneficial to claimant—that she was limping and complaining of pain in her knee the next day-- was directly contradicted by claimant later in the hearing. (TR. 69).

Amanda Burton and Kristina Martens did not see claimant after the fall until she returned from vacation. However, both talked to claimant when she returned to work on January 5, 2022, and testified that claimant attributed the fall to her knee “giving out” (Burton) or “buckling” (Martens). Given the various accounts claimant gave about her knee injury, which will be detailed below, their recollections as to what claimant said on or about January 5, 2022, were both credible.

On the other hand, Susan Willhite was not a credible witness. In reviewing her testimony at the hearing and at the deposition a few days before the hearing, there are parts of her testimony that cannot be harmonized or attributed to misunderstanding the question. I do not care to speculate on why her testimony was so varied regarding what happened on December 22, 2021, but I note that, as with Ms. Gump's testimony, the portions that would have been most beneficial to claimant were refuted by her.

I turn now to the task of trying to reconcile claimant's testimony. At various times, she said:

1. Her knee hurt immediately (R.X #3, page 34); but
2. On the AR-N form, she omitted a mention of the knee injury (R.X #2, page 2); then
3. Went to the ER where the knee was both hurting (R.X. #3, page 4); and
4. Not hurting (TR.65); but
5. She wanted it checked anyway before returning to work (TR. 63); where
6. She noticed it was hurting the same day when giving someone a shower (TR.36) and told Ms. Gump and Ms. Willhite she hurt it in the fall; but
7. It didn't start hurting until three days later (TR. 39); however,
8. It may have been longer than three days, but definitely not while on vacation (TR. 58-59); although
9. It wasn't healed when she got back from the trip, because it had swollen like a basketball (TR. 39); but
10. It was more like 12 days after the fall when it started hurting. (TR. 59-60)

I can understand how someone that is not accustomed to legal proceedings and dealing with attorneys could be nervous; the unknown does that to us all. But I cannot just pick one of her accounts without engaging in speculation about why she said the others; maintaining “I was nervous” doesn’t explain these various accounts of when her knee started hurting, all of which cannot be right. There is also the entry on the February 11, 2022, record from Arkansas Occupational Medicine Services where there is a mention of a “subsequent striking against unspecified object,” which could have only come from claimant. In her brief, claimant correctly pointed out that there is no evidence that she injured her leg while on vacation, but then again, the only testimony on that point was from a most unreliable witness, the claimant herself. It isn’t unreasonable to hear the part of her testimony where she said it was swollen when she got back from the trip, or when she said it was hurting when she returned, but not before, and conclude that something could have happened to her knee while she was off work.

Even if I could settle on one of claimant’s many versions as the accurate account of when she noticed her knee was injured, she still failed to prove that the fall on December 22, 2021, caused an injury that necessitated a knee replacement surgery. In *Jackson v. O'Reilly Auto. Inc.*, 2013 Ark. App. 755, the Court of Appeals affirmed a decision by the Commission that Jackson had not proven a causal connection between his compensable injury and the need for a knee replacement. In the case at bar, claimant’s proof that she suffered a compensable injury was insufficient due to her erratic testimony, but nonexistent on the connection between the fall and the need for a knee arthroplasty. Said another way, even if I believed claimant tore her medial meniscus when she fell to the floor on December 22, 2021, I have nothing before me to demonstrate that injury required the knee replacement surgery. Claimant had problems with her knee before December 22, 2021. Before the fall, Ms. Gump said she had always waddled when she walked (although it was more pronounced after the fall); Ms. Willhite had seen her limping; Ms. Burton testified that her job had been modified due

to her knee issues; and Ms. Martens described claimant's ambulation as hobbling. The MRI of July 24, 2020, showed "tricompartmental osteoarthritis" in her left knee, which could explain why four witnesses said claimant limped, hobbled, or waddled when she walked before the fall. Without something from Dr. Garlow (or another medical professional) opining that the fall was at least a factor in the need for a knee replacement, claimant lacked the necessary proof that it was connected to her need for that surgery.¹

ORDER

Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on or about December 22, 2021. Therefore, her claim for compensation benefits is hereby denied and dismissed.

Respondents are responsible for paying the court reporter her charges for preparation of the hearing transcript in the amount of \$ 846.95.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE

¹ The burden of proof would have been less than the "major cause" standard: "An employee is not required to prove that his compensable injury is the major cause for the need for treatment unless he is seeking permanent benefits; when the employee has suffered a specific injury and is only seeking medical benefits and temporary total disability, the major-cause analysis is not applicable and the employee need only show that the compensable injury was a factor in the need for additional medical treatment." *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004).