BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H007283

ROSE HILL,
EMPLOYEE CLAIMANT

ARKANSAS DEPT. OF TRANSPORTATION,
EMPLOYER RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
CARRIER/TPA RESPONDENT

OPINION FILED JULY 28, 2022

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

Claimant represented by the HONORABLE ROBERT B. BUCKALEW, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on December 27, 2021. The Administrative Law Judge found that the claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a right knee arthroscopic partial meniscectomy. After our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a

preponderance of the evidence that she is entitled to additional medical treatment in the form of surgery as recommended by Dr. Pearce.

I. HISTORY

On September 23, 2020, the claimant was working for the respondent-employer as a chemical operator. According to the claimant, the accident occurred in the following manner:

> Q Tell us what happened on September the 23rd of 2020.
>
> A We have two (2) supervisors on the yard, on different ends of the yard, and that particular day my supervisor didn't have no chemicals for me to spray that day so he sent me to the other supervisor to work with his – a crew he sent out. So we was [sic] going to do a litter crew and so we went out to pick up litter out on the highway, in the median. We was [sic] out picking up litter and one of the guys went on further up the road and I was, like, toward the middle of the median picking up litter, and I happened to step into a hole that was grass-covered and I couldn't see it. Then, when I stepped in the hole, I twisted – I caught the guardrail and my litter stick kept me from falling.
>
> Q Okay.
>
> A And I heard something kinda like, you know, give a popping sensation and the sensation generated up the back of my leg, so I got myself to the truck and I called the supervisor for him to call ahead for the other guy that was with me to come back and bring me to the yard.

The claimant was initially treated on the day of the accident by Dr. Scott Carle at Concentra Health Center for the chief complaint, "injured

right knee". The preliminary radiology interpretation revealed no significant radiologic findings. Dr. Carle prescribed Cyclobenzaprine and Meloxicam and referred the claimant to physical therapy. Dr. Carle released the claimant to return to work with restrictions of "no standing for more than 1 [hour]" and "must use crutches".

The claimant returned to see Dr. Carle for a follow up visit on September 25, 2020. Dr. Carle noted the following:

> Right thigh: Appearance normal. Anterior tenderness present. Palpation normal. Limited range of motion, all planes
> Right knee: Appears with an effusion grade of 1. There is tenderness in the quadriceps tendon. Flexion: AROM 90 degrees. Ligamentous Laxity Test(s): no laxity on valgus stress and no laxity on varus stress. Meniscal Test(s): negative lateral McMurray test and negative medial McMurray test.

Dr. Carle released the claimant to return to work with the following restrictions, "must use crutches, no squatting, no kneeling, may not walk on uneven terrain, no climbing stairs, [and] no climbing ladders". However, the respondents were unable to accommodate these restrictions.

The claimant returned to see Dr. Carle on September 29, 2020, at which time he noted, "She is using a crutch and has had 3 pt sessions. Her continued pain is mostly in the knee. Pain in knee is about the patella and posterior fossa. She is unable to bend past 90 degrees and c/o some locking sensations."

An examination of the claimant's right knee revealed an effusion grade of 2, no crepitus and normal warmth. Meniscal tests resulted in a negative McMurray test and equivocal result for the Medial McMurray test.

The claimant underwent a right knee MRI on October 9, 2020, that revealed the following:

> **FINDINGS**:
> …
>
> ACL: Intact. Moderate-sized intraosseous ganglion cyst at the tibial footprint of the ACL.
>
> PCL: Intact.
>
> MCL: Intact.
>
> LCL and posterolateral corner structures: Intact.
>
> MEDIAL COMPARTMENT
> Medial meniscus: Complex tear at the body/posterior horn junction. There is a small associated parameniscal cyst. Otherwise, intact.
>
> Cartilage: Moderate diffuse thinning of the medial compartment articular cartilage, worse on the femoral side of the joint.
>
> LATERAL COMPARTMENT
> Lateral meniscus: Intact.
>
> Cartilage: Mild diffuse thinning of the lateral compartment articular cartilage.
>
> PATELLOFEMORAL COMPARTMENT: Mild diffuse thinning of the patellofemoral compartment cartilage. There appears to be a

> new high-grade fissure in the central trochlea on axial image 16.
>
> MEDIAL AND LATERAL RETINACULUM: Intact.
>
> FAT PADS: Intact.
>
> EXTENSOR MECHANISM: Intact.
>
> BONE MARROW: Normal.
>
> OTHER: Small osteophytes scattered throughout the knee joint. Moderate knee joint effusion.
>
> **IMPRESSION**:
> 1. Tear of the medial meniscus at the body/posterior horn junction, not significantly changed.
>
> 2. Osteoarthritis with tricompartmental chondromalacia and small osteophytes scattered throughout the knee joint. Cartilage loss has mildly worsened since the prior exam.
>
> **KEY POINTS**: The meniscal tear has not significantly changed. There is no new meniscal tear. Arthritis and cartilage loss have worsened since the prior study. The intraosseous ganglion cyst associated with the ACL is compatible with chronic ligamentous degeneration. No definite acute injury identified. Overall I agree with the original report.

The claimant's next visit to Dr. Barnes was on October 14, 2020. Dr. Barnes' notes from this visit note an assessment of "[i]nternal derangement right knee secondary to medial meniscus tear". Dr. Barnes' plan was "[e]valuation and probable arthroscopic treatment by Dr. Pearce".

The claimant saw Dr. Pearce on October 19, 2020. After examining the claimant, Dr. Pearce noted the following:

> **IMAGING**: … MRI scan done on October 9 shows a medial meniscal tear. This is similar to a tear seen on the exam of June 19, 2018 which is also work related.
> **IMPRESSION**: Right knee pain with acute on [sic] chronic injuries all work related with medial meniscal tear and probable chondromalacia grade 2 and 3[.]
> **PLAN**:
> 1. The patient is not at maximal medical improvement
> 2. A sitting job only
> 3. We discussed various treatment options. At this point she is having enough difficulty that arthroscopy should be considered. She understands that this may not be curative. In fact, it may not help and in a small percentage of cases can make her knee worse. She would like to proceed. She is not making much progress over the last several weeks.
> 4. ... This will be for right knee arthroscopic partial medial meniscectomy and probable chondroplasty.

The claimant returned to Dr. Barnes on November 18, 2020. The History of Present Illness section of Dr. Barnes' medical record provides:

> Rose Marie Hill is a 51 y.o. female patient. She returns today for re-evaluation. She did see Dr. Pierce [sic]. MRI showed her to have a meniscal tear which was unchanged from her previous MRI. There is much confusion. The patient says that she stepped in a hole at work and that is when she injured her knee. Apparently, that is based on some of our notes. The patient gives a clear history of this stepping

> in a hole and I assume she reported this at work. The symptoms are much different now than what she had prior to that. She had continued to work for years without problems with her knee though the MRI may have looked similar.

Dr. Barnes assessed the claimant with "continued right knee pain" and noted the following plan:

> In this confusing scenario, it appears that she did have a previous MRI by [sic] that showed her to have a cartilage tear but that this was giving her no significant symptoms. Her acute injury from stepping in the [hole] seems to be what caused her to have significant symptoms therefore resulting in the need for arthroscopic treatment. It is my impression that this may have been pre-existing but not symptomatic. Based upon my narrative above, it is my impression that her recent injury is the major cause for the need for her arthroscopic medial meniscectomy. This would be as a direct result of the reported 923 2020 injury. …
>
> Patient could return to sit down only duty at this time.

Prior to her September 23, 2020, work accident, the claimant had a pre-existing right knee condition. The claimant was involved in a work accident on July 12, 2010, that resulted in the claimant having a right total hip arthroplasty.

A right knee x-ray taken on September 16, 2010, revealed "probable knee joint effusion". The claimant was seen by Dr. Jody Bradshaw on March 2, 2011, for right knee pain. Dr. Bradshaw noted an impression that "[s]he likely had a chondral or meniscal injury during her

initial trauma". A diagnostic arthroscopy of the right knee with intervention as needed was planned. On March 15, 2011, this procedure was performed by Dr. Johannes Gruenwald. The intraoperative findings were as follows:

> 1. Patellofemoral Compartment: Mild osteoarthritic changes with minimal cartilage fraying.
> 2. Medial Compartment: Meniscus intact without tear, chondral surfaces in good repair.
> 3. Lateral Compartment: Meniscus intact without tear, chondral surfaces in good repair.

The claimant had x-rays of her right knee taken again on June 20, 2012. These x-rays revealed the following:

> FINDINGS: No fracture or dislocation is identified. The joint spaces and bony alignment appear to be well maintained. The overall bone density is within normal limits. The heterotopic calcifications seen along the medial femoral epicondyle along the MCL are stable. These changes are stable compared [to] the prior exam. No joint effusion is seen.

The claimant underwent an MRI on her right knee on June 19, 2018, that showed the following:

> FINDINGS:
>
> Medial Compartment: A complex tear of the medial meniscus posterior horn and body is seen as evidenced by intermediate signal extending to both the superior and inferior articular surface of the posterior horn as well as free edge fraying. Globular intermediate signal extending to the inferior margin of the body is also seen related to prior injury. Otherwise, the

MCL appears intact. Full-thickness cartilage degenerative changes are seen without subchondral edema representing a grade 3 cartilage degeneration of the femoral and tibial articular surface. Mild joint capsule degeneration is seen along the posteromedial aspect.

Lateral Compartment: The lateral meniscus and lateral collateral ligament complex are intact. Mild partial-thickness fraying of the articular surface of the femoral and tibial cartilage representing grade 2 cartilage degeneration.

Patellofemoral Compartment: No subluxation. Normal appearance of the cartilage.

Joint Effusion: Small.

ACL/PCL: Intact.

Extensor Mechanism: Intact.

Bone Marrow: Normal.

Posterior Soft Tissues: Normal.

Neurovascular Bundle: Normal.

IMPRESSION:

1. A complex tear of the medial meniscus posterior horn and body is seen with extending to the superior and inferior articular surface with free edge fraying. There is moderate associated extrusion of the meniscal body. Associated full-thickness cartilage degeneration is seen along the medial compartment femoral and tibia surfaces capsule degeneration posteromedially.

2. Mild cartilage fraying along the lateral compartment femoral and tibial surface representing grade 2 cartilage degeneration.

Regarding her 2018 knee pain, the claimant offered the following testimony:

> Q Didn't you have – I believe in 2018 you had some type of problems with your – was it your knee?
>
> A Yeah, my knee was swelling.
>
> Q Your right knee?
>
> A Uh-huh. My right knee was swelling.
>
> Q And whose care did you come under for that particular problem?
>
> A Dr. Barnes.
>
> Q So Dr. Barnes was your treating doctor?
>
> A Mm-hm.
>
> Q How long did that episode last; these problems with your knee?
>
> A It just last [sic] maybe that day. I went to see him – the day it happened at work and I went the next day to see him, and I went back to work.
>
> Q So you didn't miss any time?
>
> A …No I didn't miss any time. No.

Dr. Gitanjali Bajaj provided the following opinion dated October 9, 2020, comparing the claimant's June 19, 2018, MRI results with those of the October 9, 2020:

> Impression:

> 1. As compared to MRI dated 06/19/2018, development of moderate anterior cruciate ligament degenerative changes with insertional subcortical changes along the anterior tibial spine. No definite ligament tear noted.
>
> 2. Unchanged complex tear of the body and posterior horn of the medial meniscus with free edge fraying and attenuation of the inner half. Persistent partial medial meniscal extrusion.
>
> 3. Unchanged multifocal areas of grade 2-3 cartilage loss within the medial compartment and grade 2 cartilage loss within the lateral compartment.

Dr. Barnes was asked whether the claimant's meniscus tear was related to her 2010 injury. Dr. Barnes respondent, "No".

By responses to a letter from the case manager dated October 29, 2020, Dr. Charles Pearce provided the following opinions:

> 1. What was Ms. Hill's 09/23/20 injury diagnosis?
> Exacerbation of knee pain and med. men. tear
>
> 2. What pathology identified on the MRI was considered acute 09/23/20 injury related?
> This is an exacerbation of previous OTJ injury in 2018. …
>
> 3. Would the mechanism of the 09/23/20 injury (twisting of the knee) have resulted in any pathology changes identified on her MRI?
> Yes they could, but prob. an exacerbation of 2018 injury
>
> 4. Is the proposed arthroscopic medial meniscectomy and chondroplasty indicated and medically appropriate as the result of the

09/23/20 injury versus pre-existing pathology? Please explain and provide supporting rationale.
It is preexistent to that date, but 2018 was also OTJ

5. Can you state, within a reasonable degree of medical certainty, that the major cause (greater than 50%) for the arthroscopic medial meniscectomy and chondroplasty are the direct result of the reported 09/23/20 injury resulting in symptoms and surgical pathology? Please explain and provide supporting rationale.
Yes, exacerbation/aggravation
If 2018 is not OTJ, then new dx is pre-existent

6. If the need for the arthroscopic medial meniscectomy and chondroplasty are indicated as the result of the pre-existing pathology, is there any additional treatment indicated as the result of 09/23/20 injury?
No
If pre-existed no other tx indicated

7. If no additional treatment is indicated as the result of the 09/23/20 injury, has Ms. Hill achieved maximum medical improvement (MMI) as the result of her 09/23/20 injury?
Not at MMI
If 2018 not OTJ, then pt @ MMI

8. If MMI has been achieved, is there any assignment of a permanent partial physical impairment rating as the result of the 09/23/20 injury? If so, please document the percent of the impairment and the objective findings this is based in accordance with the enclosed Arkansas Workers' Compensation Rule 34.
N/A
PPI – 0% if no pre-existent

A Pre-hearing Order was filed on July 15, 2021. "The claimant contends she sustained a compensable on the job injury which

occurred on or about September 23, 2020, while working for Arkansas Department of Transportation (AR DOT). While this claim was initially accepted as compensable and benefits were paid, the respondents have controverted additional medical treatment as well as payment of initial TTD benefits to a date to be determined. The claimant contends this claim has been controverted as far as these benefits are concerned, entitling her attorney to an attorney's fees [sic] on the unpaid indemnity benefits. The claimant reserves the right to pursue future benefits, including but not limited to rehabilitation, and the extent of her permanent partial and wage loss disability. The claimant specifically reserves any and all other issues for future litigation and/or determination."

"The respondents contend the claimant has received all reasonably necessary medical treatment related to her compensable injury. After the September 23, 2020, incident the claimant was seen by Dr. Scott Carle, Dr. Lowry Barnes, and then Dr. Charles Pearce. An MRI scan was done on October 9, 2020, that revealed a medial meniscus tear in her right knee which was unchanged from the MRI done on June 19, 2018, well *before* her work-related incident. A right knee surgery has been recommended for the claimant, but it is the respondents' understanding [that] Dr. Pearce has indicated the proposed surgery is not related to the claimant's September 23, 2020, incident. Dr. Pearce has indicated the claimant reached maximum medical improvement (MMI) on November 5,

2020, and she has no permanent anatomical impairment attributable to the September 23, 2020, work-related incident. The respondents contend the claimant has received all appropriate benefits to which she is entitled related to her September 23, 2020, incident. The respondents specifically reserve any and all other issues for future litigation and/or determination."

The parties agreed to litigate the following issues:

> (1) Whether and to what extent the claimant is entitled to additional medical and TTD benefits from November 4, 2020, through a date yet to be determined.
>
> (2) Whether the claimant's attorney is entitled to a controverted fee on these facts.
>
> (3) The parties specifically reserve any and all other issues for future litigation and/or determination.

After a hearing, an Administrative Law Judge filed an opinion on December 27, 2021. The Administrative Law Judge found:

> 1. The stipulations to which the parties agreed in the Prehearing Order filed July 15, 2021, hereby are accepted as facts.
>
> 2. The claimant has failed to meet her burden of proof in demonstrating the recommended, elective surgical procedure – an arthroscopic partial meniscectomy of her right knee – is related to, much less that it constitutes reasonably necessary medical treatment for – the subject September 23, 2020, work incident.
>
> 3. There exists no credible evidence whatsoever, and specifically no objective evidence, the "complex tear" and other

> degenerative findings revealed on the June 2018 MRI, nor the significant symptoms the claimant was experiencing at that time, were in any way work-related. In fact, the claimant admitted she could recall no specific work- or non-work-related event that precipitated her June 2018 right knee complaints and need to seek medical treatment [at] that time.
>
> 4. The October 2020 MRI which the claimant underwent after the subject September 23, 2020, work incident, does not reveal any new objective medical findings of a new injury. In fact, the June 2018 and October 2020 MRI findings are essentially identical; and the exact same surgical condition for which the claimant now seeks surgery in 2021 existed on the non-work-related June 2018 MRI, and was interpreted by the claimant's medical specialists to be "unchanged" on the October 2020 MRI following the subject September 23, 2020, work incident.
>
> 5. The claimant's attorney is not entitled to a fee on these facts.
>
> The claimant appeals these findings to the Full Commission.

II. ADJUDICATION

A. Additional Medical Treatment

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co*., 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 Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984). Reasonable and necessary medical services may include those necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 593 (1995).

An employee is not required to prove that her compensable injury is the major cause for the need for treatment unless she 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).

The claimant had a pre-existing condition that was aggravated by her work accident. A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which compensation is sought. *See*, *Nashville Livestock Commission v. Cox*, 302 Ark. 69, 787 S.W.2d 664 (1990); *Conway Convalescent Center v. Murphree*, 266 Ark.

985, 585 S.W.2d 462 (Ark. App. 1979); *St. Vincent Medical Center v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The employer takes the employee as he finds him. *Murphree*, *supra*. In such cases, the test is not whether the injury causes the condition, but rather the test is whether the injury aggravates, accelerates, or combines with the condition.

The parties stipulated that the claimant sustained a compensable right knee injury on September 23, 2020. After the claimant failed conservative treatment, Dr. Barnes referred her to Dr. Pearce for further evaluation. Dr. Pearce recommended that the claimant undergo an arthroscopic medial meniscectomy and chondroplasty. The Full Commission finds that the claimant proved by a preponderance of the evidence that she is entitled to the recommended treatment.

Although it appears that the claimant had a right knee meniscus tear in 2018, this condition was largely asymptomatic and not severe enough to prevent the claimant from work. In fact, the one time the claimant experienced swelling in her right knee for which she sought treatment in June of 2018, lasted very briefly. According to the claimant's testimony, the swelling lasted for one day and she did not miss any work because of it.

However, following the accident the claimant suffered from more severe symptoms than those she experienced prior to this accident. As Dr. Barnes explained, "[the claimant's] acute injury from stepping in the

hole seems to be what caused her to have significant symptoms therefore resulting in the need for arthroscopic treatment".

Additionally, prior to the September 23, 2020, work accident, despite having a meniscus tear in her right knee, the claimant was able to work a manual labor position without restrictions. However, since this accident, the claimant has been placed on restrictions that limit her to sitting while performing her work duties. Based on these marked differences in the claimant's symptoms, it is clear that her workplace injury was at least a factor in the need for additional medical treatment. Therefore, we find that the recommended arthroscopic partial meniscectomy is reasonably necessary in connection with the claimant's compensable right knee injury.

Therefore, for the foregoing reasons, the Full Commission finds that the claimant proved by a preponderance of the evidence that she is entitled to medical treatment in the form of a right knee arthroscopic partial meniscectomy as recommended by Dr. Pearce.

B. Temporary Total Disability Benefits

Ark. Code Ann. §11-9-521 provides that for scheduled injuries, an injured worker is entitled to temporary total benefits during the healing period or until the employee returns to work. Ark. Code Ann. §11-9-526 provides that "if any injured employee refuses employment suitable to his or her capacity offered to or procured for him, he or she shall not be entitled to any compensation during the continuance of the refusal, unless

in the opinion of the Workers' Compensation Commission, the refusal is justifiable."

It is not necessary for a claimant with a scheduled injury to prove that she is totally incapacitated from earning wages in order to collect temporary total disability benefits. *Fendley v. Pea Ridge Sch. Dist.*, 97 Ark. App. 214, 245 S.W.3d 676 (2006). Rather, she is entitled to temporary total disability benefits during her healing period or until she returns to work, whichever occurs first, regardless of whether she has demonstrated that she is actually incapacitated from earning wages. *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

"Healing period" means that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Mad Butcher Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The Full Commission finds that the claimant is entitled to additional temporary total disability benefits. The claimant was placed on light duty work with the most recent restrictions being sitting duties only. The respondents were unable to accommodate the claimant's restrictions but paid her temporary total disability benefits through November 4, 2020. Drs. Barnes and Pearce have indicated that the claimant has not reached

maximum medical improvement. Therefore, the claimant remains in her healing period.

In the present matter, the claimant suffered an admittedly compensable injury to her right knee. Since the medical records show that the claimant sustained a scheduled injury, remains in her healing period and has not returned to work, the Full Commission finds that the claimant is entitled to temporary total disability benefits starting on November 5, 2020 (the date the respondents stopped paying TTD benefits) and continuing until a date yet to be determined.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Pearce and additional temporary total disability benefits from November 5, 2020, to a date to be determined. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars ($500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

_____
SCOTTY DALE DOUTHIT, Chairman

_____
M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority because I find that the only evidence of a causal connection between Claimant's current injury and her preexisting condition are (1) Claimant's subjective complaints of pain, and (2) Dr. Barnes' statement that her workplace injury "seems to be what caused her to have significant symptoms therefore resulting in the need for arthroscopic treatment."

The majority cites to Dr. Barnes' opinion in support of its finding that Claimant's treatment was causally related to her workplace injury. Dr. Barnes says more than once that this is a confusing case before speculating that the workplace injury "seems to be what caused her to have significant symptoms." Moreover, the significant symptoms were complaints of pain.

On the other hand, the objective medical records show that there are no changes to Claimant's pre-existing meniscus tear and only arthritic

changes. Under the heading "KEY POINTS," the radiology report indicates that the meniscal tear has "not significantly changed. There is no new meniscal tear." Lastly, it concludes that there is "no definite acute injury identified."

Under Arkansas' Workers' Compensation Laws, medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102. Uncertainty or opinions based on speculation and conjecture can never replace proof. *Crudup v. Regal Ware*, 341 Ark. 804, 811, 20 S.W.3d 900, 905 (2000).

Because the only proof that the treatment sought and the workplace incident are causally connected are based on subjective complaints of pain and speculation, I would affirm. Accordingly, I respectfully dissent from the majority opinion.

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CHRISTOPHER L. PALMER, Commissioner