

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G908131

PEARL HOFFMON,
EMPLOYEE

CLAIMANT

PIZZA HUT,
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 4, 2022

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondent represented by the HONORABLE RICK BEHRING, JR., 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 November 22, 2021. The Administrative Law Judge found that 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. 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 the additional medical treatment recommended by Dr. Arnold, including a left knee arthroscopy.

I. HISTORY

The claimant, now 40 years old, was involved in a work-related accident on December 7, 2019. The claimant gave the following testimony as to how the work accident occurred:

Q Tell us about your injury, please.

A I was going on a delivery to an apartment complex. Got out of my car like normal. Went up the stairs. I gave the delivery. I was coming back down and I was crossing the sidewalk area and somehow my foot got stuck up underneath a carport – or a cement car stop and when that happened, I fell down and hit my knee, twisted it sometime during that time. And I was trying to yell for help. I saw one person out in the background a little ways, but they never came. I just crawled back to my car and got in and called my employer at that time.

After her initial treatment at Baptist Health Emergency Department on the day of the accident, the claimant began treating with Dr. Terry Clark. Dr. Clark ordered an MRI that yielded the following findings:

Medial meniscus: intact.
Lateral meniscus: intact.
Anterior cruciate ligament: Appears intact.
Posterior cruciate ligament: intact.
Medial collateral ligament: intact.
Lateral collateral ligament: intact.
Quadriceps and patellar ligaments and tendons: intact.

Bone marrow: Moderate bone marrow edema is seen involving the proximal tibia particularly anteriorly both the lateral and medial sides more pronounced on the medial side.
Osteochondral surfaces: intact.
Popliteal fossa: Normal
Patella and patellar retinacula: intact.
Moderate joint effusion.

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.

Dr. Clark referred the claimant to physical therapy.

Unfortunately, the claimant's condition did not improve with physical therapy, and she was referred to Dr. Trent Johnson for additional treatment.

On August 11, 2020, Dr. Johnson performed a left knee arthroscopy with resection of fat pad and a left knee resection of plica. Dr. Johnson determined that the claimant was at maximum medical improvement on November 24, 2020 and released her to full-duty work.

The claimant exercised her right to a one-time change of physician from Dr. Trent Johnson to Dr. Chris Arnold. Dr. Arnold ordered an MRI which was performed on May 21, 2021. The MRI revealed the following:

FINDINGS:
Oblique tear of the posterior horn of the medial meniscus is present. Small oblique tear at the anterior horn is also suggested on sagittal image 26. The lateral meniscus is unremarkable.

Abnormal increased signal intensity is present involving the patellar tendon proximally near the patellar attachment with partial tearing medially. The anterior cruciate and posterior cruciate ligaments are intact. Medial and lateral collateral ligaments are unremarkable. No significant joint effusion. Quadriceps tendon is intact. Patellar retinacula are intact. Bone marrow signal intensity is unremarkable. No significant cartilage defect.

IMPRESSION:

1. Medial meniscus tear.
2. Patellar tendinosis with partial tearing.

Dr. Arnold noted the following plan for treating the claimant's meniscus tear:

Surgical Options and Alternatives

Potential for Future Surgery: I explained that though I am not recommending a surgical intervention at this time, this may be recommended or necessary in the future to alleviate or treat this condition, especially if conservative measures fail or the condition continues to progress or worsen.

Observation: I discussed observing the patient for now and recommended reexamination in the future.

... After counseling the patient, we decided on the following plan for the LEFT KNEE:
Observation and consider knee scope.

Dr. Mark Allard performed an Independent Medical Evaluation on September 2, 2021. Dr. Allard opined the following:

It is my impression that Ms. Hoffman has persistent left knee pain and buckling secondary to deconditioning and muscle atrophy. She

does not have medial joint line tenderness, [sic] but has no pain with meniscal provocation tests. I do not believe that the changes in the posterior horn of her medial meniscus on her new MRI [are] different than the changes looked [sic] 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 [more] likely to improve her symptoms than a repeat surgery.

A pre-hearing order was filed on September 1, 2021. “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 not yet controverted this recommended treatment. Instead, the respondents have requested a second opinion to address the causal relationship between the claimant's current condition and the specific incident on December 7, 2019. The claimant has agreed to appear for an independent medical examination with Dr. Mark Allard. 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."

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.

After a hearing, an Administrative Law Judge filed an opinion on November 22, 2021. The Administrative Law Judge found that "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". The claimant appeals this finding to the Full Commission.

II. ADJUDICATION

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).

Dr. Arnold, who is the claimant's authorized treating physician, has recommended additional treatment (including an arthroscopy if conservative measures fail) to treat the claimant's left knee meniscus tear. Clearly the claimant is suffering from ongoing problems with her compensable left knee injury. The claimant's treating physician opined that she has a medial meniscus tear and has indicated that at some point the claimant may need surgical intervention to alleviate and treat this condition. Therefore, we find that the treatment recommended by Dr. Arnold is reasonable and necessary treatment.

The Full Commission acknowledges the opinions of Dr. Allard that there were no new findings on the May 21, 2021, MRI compared to the December 19, 2019, MRI and that there was no evidence of a medial meniscus tear shown on the MRI. However, we assess little weight to the opinion of Dr. Allard.

Although Dr. Allard opined that the claimant did not suffer a medial meniscus tear, even he noted that the claimant had mild fraying of the anterior horn of her medial meniscus that appeared in both MRIs. This damage to the medial meniscus is sufficient to warrant additional treatment.

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 recommended by Dr. Arnold, including a left knee arthroscopy.

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 recommended by Dr. Arnold, including a left knee arthroscopy and benefits for any associated period of disability. 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

The majority finds that treatment Dr. Anderson recommends for a torn meniscus is reasonable and necessary medical treatment in connection to Claimant's compensable injury. For the reasons set out below, I respectfully dissent.

The mystery of this case is whether Claimant's meniscus is a master of disguise. Was it able to cloak itself as an *intact* meniscus during an MRI taken just days after the workplace injury, an arthroscopy performed eight months later, and a functional capacity evaluation done a year later? Did it carry on this ruse when an independent medical examiner reviewed these findings and examined Claimant for himself? And then, did it tear off its mask a year and a half after the workplace injury only to reveal for the first time its true identity as a torn meniscus? To this I say, "*Balderdash!*"

I. BACKGROUND

Claimant sustained a compensable injury when she fell at work in December 2019. She testified that she tripped and fell, landing on her knee, and that she "twisted it sometime during that time."

Dr. Terry Clark treated Claimant later that day at the emergency room of Baptist Health. The MRI Dr. Clark ordered revealed that all Claimant's tendons were intact, but that she was suffering from severe bone-marrow edema involving the proximal tibia ("most likely due to bone bruises") and moderate joint effusion. Claimant then went through some physical therapy, which helped to some degree. In August 2020, Claimant was still suffering from her fall so Dr. Johnson performed a left-knee arthroscopy in August 2020.

During Dr. Johnson's arthroscopy, he performed resection of a fat pad and a left-knee resection of plica. Dr. Johnson wrote the following in his post-surgical notes:

Diagnostic arthroscopy performed with the following findings. The patient had a fairly extensive medial plica about the medial aspect of the knee. The patient had a fat pad, which was present and impinging in the patellofemoral compartment. ACL was intact to visualization and probing. Lateral compartment showed no signs of chondromalacia. The medial meniscus was intact. The patient's medial compartment showed no signs of chondromalacia. No further impingement across the cartilage, across the anterior medial or lateral aspect of the knee or in the patellofemoral compartment.

Dr. Johnson continued to treat Claimant until November 24, 2020, when he released her at maximum medical improvement and released her to full-duty work. Dr. Johnson recommended that she undergo a functional capacity evaluation, which Dr. Charles Davidson conducted on December 29, 2020.

During the FCE, Claimant's passive range of motion ("PROM") was determined to be normal. The PROM is a subjective test to determine a person's ability to flex or extend the knee joint. The joint is flexed and extended by someone other than patient to determine the range a joint will move. The normal range is anything over 110 degrees of flexion and anything under 5 degrees of extension. Claimant's PROM was 120 degrees and 0 degrees respectively. Claimant's PROM did not indicate a torn meniscus and she was given a 0% impairment rating.

A muscle-atrophy test showed Claimant's left thigh (measured 10 cm above the patella with the knee fully extended and the muscle relaxed) had a circumference that was 1.5 cm less than that of her right thigh. This led to a 3% impairment rating to the lower extremity, or 1% to the body as a whole.

The FCE describes "other physical examination findings" as follows:

Ms. Hoffmon did not have color or temperature differences when compared to the contralateral side. Ms. Hoffmon exhibited full PROM of the contralateral LE. Ms. Hoffmon did not have edema in the affected knee. Ms. Hoffmon had normal sensation of the affected LE. There was no visible varus or valgus deformity noted and no ligamentous instability with varus or valgus stress.

Dr. Allard performed an independent medical evaluation in September 2021 and concluded that Claimant does have persistent left-knee pain and buckling caused by "deconditioning and muscle atrophy."

Dr. Allard's opinion was that an aggressive strengthening program would be more likely to improve Claimant's symptoms than a repeat surgery.

II. STANDARD

Arkansas Workers' Compensation Law requires employers to pay for an injured employee's medical treatment that is reasonably necessary **in connection with** the injury received by the employee. Ark. Code Ann. §119-508(a) (emphasis added).

III. DISCUSSION

Respondents accepted Claimant's left-knee injury as compensable and provided appropriate medical care and indemnity benefits.

Respondents have paid all reasonable and necessary medical treatment in connection with compensable injury. Claimant reached maximum medical improvement on November 24, 2020, with no workplace restrictions and no further recommended treatment.

Perhaps it would be easier for me to overlook the paucity of torn-meniscus sightings if no search parties had gone out looking. As set out above, there were search parties—Dr. Johnson even stuck a camera into Claimant's knee—but they all concluded that there was no torn meniscus.

Dr. Arnold's recommended treatment might be a very reasonable approach to treating a torn meniscus. But even if Claimant's meniscus is torn, there is nothing in the record to suggest that Claimant tore her

meniscus during the workplace incident. In fact, the medical evidence shows the opposite.

IV. CONCLUSION

I have conducted a thorough evaluation of the evidence presented in this case, studied the hearing transcript and the parties' briefs, and found not a scintilla of evidence that there exists a causal connection between Claimant's workplace injury and a torn meniscus discovered by Dr. Arnold for which he recommends the additional medical treatment at issue here. Because I cannot find a causal connection between the workplace incident and Claimant's torn meniscus, I find that Claimant failed to prove by a preponderance of the evidence that the treatment for a torn meniscus is reasonable and necessary medical treatment in connection to her compensable injury. Accordingly, I respectfully dissent from the majority.

CHRISTOPHER L. PALMER, Commissioner