

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G907251

TRAVIS JEFFERSON, EMPLOYEE

CLAIMANT

GRANT GARRETT EXCAVATING, INC., EMPLOYER

RESPONDENT

**TRAVELERS INSURANCE COMPANY,
CARRIER/TPA**

RESPONDENT

OPINION FILED FEBRUARY 22, 2021

A hearing was held before ADMINISTRATIVE LAW KATIE ANDERSON in Pulaski County, Little Rock, Arkansas.

Claimant, Mr. Travis Jefferson, was represented by Ms. Whitney James, Attorney at Law, Little Rock, Arkansas, at the hearing.

Respondents were represented by Mr. Guy Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on November 19, 2020, in Pulaski County, Arkansas. A Pre-Hearing Order was previously entered in this case by ADMINISTRATIVE LAW JUDGE BARBARA WEBB on September 29, 2020.

The following stipulations were submitted by the parties. I hereby accept the following proposed stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employee-employer-carrier relationship existed on or about October 12, 2019.
3. By way of email, the parties agreed to hold the issue of average weekly wage in abeyance.

By agreement of the parties, the issues to be litigated at the hearing were as follows:

1. By way of email, the first issue to be litigated was whether Claimant sustained a compensable injury to his right knee as a result of the incident on October 12, 2019.
2. The second issue to be litigated was whether Claimant was entitled to medical benefits as a result of the October 12, 2019, incident.
3. By way of email, the third issue to be litigated was whether Claimant was entitled to temporary total disability benefits from the date of Claimant's termination from Respondent-Employer to a date yet to be determined.
4. The fourth issue to be litigated was attorney's fees.

CONTENTIONS

Claimant:

Claimant contends that on October 12, 2019, while in the course and scope of his employment, he was driving a dump truck when the brakes failed, causing the vehicle to roll over in the intersection of the road. Claimant sustained injuries to his left shoulder, neck, head, and right knee. He initially sought treatment at the emergency room and saw Dr. Mark Larey. An MRI on November 14, 2019, revealed poor visualization of the ACL with a suspected meniscus tear. Claimant began treating with Dr. Ethan Shock in March of 2020. An MRI on March 12, 2020, revealed a complex tear of the meniscus. Dr. Shock recommended a right knee arthroscopy with ACL allograft reconstruction. Respondents have denied the claim in its entirety. Claimant contends that he sustained compensable injuries to his left shoulder, neck, head, and right knee on October 12, 2019, and that his attorney is entitled to an attorney's fee. Claimant reserves all other issues.

Respondents:

Respondents contend that Claimant did not sustain a compensable injury within the course and scope of his employment. Claimant's complaints are pre-existing and not the responsibility of Respondents.

The record consists of the hearing transcript of November 19, 2020, and the documents contained therein.

DISCUSSION

During the hearing, Mr. Jefferson, (Claimant, used interchangeably herein) and Mr. Billy Brad Groom were the only witnesses to testify.

Claimant was thirty-six (36) years old at the time of the hearing. He had a high school education and obtained his CDL in November of 2014. He testified that he had worked for Grant Garrett Excavating (Respondent-Employer, used interchangeably herein) since approximately September of 2019. He stated that he was a dump truck driver and explained that he was responsible for hauling materials to various construction sites.

On the day of the accident, October 12, 2019, he was working at full duty without any restrictions. He explained that on that day his truck was in the shop, and he was instructed to use another dump truck to complete the haul. He prepared the truck for the trip and loaded in Southwest Little Rock. Once his truck was loaded, he and several other dump trucks followed one another to North Little Rock. His supervisor assistant, Henry, was in front of him and three other trucks were behind him in the line. As Henry took the exit, Claimant followed him. As he veered off the exit, he started to use his brakes. At that moment, a buzzer sounded indicating that he did not have any air in the brakes, which meant that they would not function properly. He further explained:

Normally, it's -- the emergency feature will pop down and the brake lights, but that didn't happen. So once the buzzer indicated -- indicator goes off to let me know I don't have any brake, I am committed into the exit, at this point. I can't jump back on the highway, because it's grass in the middle, now. So I had to exit. And I got -- I called over the radio to let the other people in front of me and behind me know, like, "I don't have any brakes."

Henry was in front of me, the Supervisor. He was in front of me; so I swerved to miss him. I swerved left to miss him, and it was -- like, it was a two-lane embankment. So I was in the left lane. I was supposed to -- this lane was to turn left. Luckily, wasn't nobody in that lane. So I took that lane for, approximately, like, 20 feet or so, and at the end of that, it's a stoplight. At that stoplight, it's a train on the tracks ahead, and the train is not moving, it's still.

It's a red light. The cars on the right are waiting to -- waiting for the train to start moving again at the time. So that just didn't -- we'd have cars on the left that also waiting to get that light; so they can go.

So I couldn't go left or right just, you know, freely without potentially hurting somebody. So basically, without thinking, you know, I thought about everybody else instead of myself and I just kinda turned - - turned real, real quick, so I didn't hit the train and I didn't hit the cars and I kinda just missed it all. And in the process of doing that, the truck ended up turning over, and it flipped.

Claimant stated that a police officer was nearby and immediately came over to the accident scene to assist, and a firefighter broke the windshield to help get Claimant out of the truck.

Claimant testified that following the accident he had pain in his right knee, pain in his left shoulder, a knot on his forehead, and sharp pain in the palms of his hands. He was examined by paramedics at the scene, and they instructed him to go to MedExpress if he needed further treatment. Claimant stated that he was at the scene for several hours after the accident and ultimately left with his supervisor, Henry, around 2:00 or 3:00 p.m. He then got a ride to the dump site, where a drug test was administered. Thereafter, he was taken to his vehicle that was parked at another location.

Claimant testified that he sought medical treatment at the emergency room on October 14, 2019, for a lump on his forehead, pain in his left shoulder, pain in the palms of his hands, and pain in his right knee. He stated that emergency room personnel took x-rays and prescribed muscle relaxers and pain medication.

Claimant stated that he also visited another hospital for another opinion. He stated that they gave him additional pain medication and told him to follow-up with his PCP. He testified that he did not have insurance at the time, and thus, he did not have a PCP. Thereafter, Claimant saw the company doctor, who ordered an MRI.

Claimant testified that he returned to work after the accident, and Respondent-Employer accommodated his light duty restrictions. For light duty, he reported to the shop where he filed paperwork and did odd jobs. When Claimant complained of needing more hours, they let him go

to the job site and count the trucks as they came in to dump. As for returning to driving a dump truck, Claimant told his employer that he could not return to his regular duties until after he had undergone surgery on his knee.

Claimant testified that he visited MedExpress in March of 2020. He explained that, although it had been a few months since his last doctor visit, he was still having problems with his knee between November of 2019 and March of 2020. He did not seek medical treatment during that time because he was waiting on his health insurance to become effective. Claimant testified that his knee symptoms included popping and worsening pain when moving the knee.

Claimant was questioned regarding MedExpress clinic notes from March 3, 2020, which stated, “History of Present Illness,” and “Context: Denies work-related. No known injury. While playing sports, struck with blunt object. Reports history similar surgery in the past.” Claimant explained that the note was referencing his prior shoulder surgery in 2001 or 2002, when he was in the eleventh grade. Claimant denied ever having any prior knee surgery on either knee. With regard to an additional note from the MedExpress records from March 3, 2020, which stated that Claimant reported a pop in his knee when he was at home in March of 2020, Claimant responded that the popping in his knee had been ongoing. He further explained that on that particular occasion, he took a step, his knee popped, and he could not put any pressure on it. As a result, he sought care at MedExpress. Claimant stated that he did not sustain an injury to his knee between the work-related accident on October 12, 2019, and March 3, 2020.

Thereafter, Claimant saw Dr. Ethan Shock, who ordered an MRI on the first visit and ultimately recommended surgery on his knee. At the time of the hearing, Claimant had not undergone the surgery because he was unable to afford it. Claimant testified that he was laid off by Respondent-Employer due to lack of work in March or April of 2020. He stated that he was

not working at the time of the hearing because he had not been cleared by his physician to return to work, and he was still awaiting surgery on his right knee.

On cross-examination, Claimant testified that he lived with his father in North Little Rock and that he helped take care of him. Claimant stated that his father had lung cancer and was undergoing treatment.

Claimant also admitted that he was aware that he had to report an injury. He testified that he did not know what struck his knee during the accident.

Claimant testified that the accident was between 9:00 a.m. and 10:00 a.m. and that he remained at the scene until 2:00 p.m. or 3:00 p.m., when Henry, his supervisor assistant, drove Claimant to the dump site for a drug test and then to his vehicle. He was examined by paramedics at the scene, and they told him to go to MedExpress if he needed something. He did not seek medical treatment until the second day after the accident, on October 14, 2019.

In November of 2019, Claimant saw Dr. Larey, the company doctor, and had an MRI on his shoulder and right knee in November of 2019. Claimant admitted that no treatment was recommended for his shoulder; that the knot on his head went away; and that his hands improved.

He testified that he presented at MedExpress in March of 2020. MedExpress personnel took x-rays and referred him to an orthopedic surgeon. Claimant testified that he reported to MedExpress that, “earlier in the day, he felt a pop in his right knee” when stepping out of the shower.

Claimant admitted that he continued to work light-duty for Respondent-Employer since his accident and that he was physically able to do the light-duty work. When questioned on cross-examination about the statement in the MedExpress notes of March 2020, Claimant stated that it was in regard to his prior shoulder injury, as he had not undergone prior knee surgery on either

knee. Claimant also acknowledged the MedExpress note about the popping in his right knee and testified that he had previously reported the popping to Dr. Larey in November. Claimant agreed that the x-rays taken at the emergency room in November of 2019 showed no acute trauma of the knee and no acute abnormality of the shoulder; however, he stated that his pain continued.

Claimant was questioned regarding the previous set of x-rays from October 21, 2019, that were taken and agreed that the x-ray of the knee showed degenerative osteoarthritic changes; however, Claimant stated that he had experienced pain and popping in his knee since the injury. When questioned about why there was no report of “popping” of his knee in the 2019 medical records, Claimant emphasized that he had, in fact, reported to his treating doctors prior to March of 2020, that he had popping in his knee and he did not know why it was not mentioned in the records. Claimant stated that he was not taking any prescription pain medication for his knee.

Claimant testified that while he was on light-duty work in the shop and when he was on-site counting dump trucks, he was able to sit in a chair the entire day.

Claimant also agreed that Dr. Shock was the first doctor to recommend surgery.

Claimant testified that he received unemployment after he was laid off from Respondent-Employer, and he also received pandemic unemployment. Claimant admitted that while he was receiving unemployment benefits, he sought new employment, including local driving jobs and some warehouse jobs. In the meantime, he was caring for his ill father, and he would help with chores around the house, including cooking, some lawn mowing, and washing clothes.

In regard to Dr. Shock’s first evaluation on March 12, 2020, Claimant agreed that he reported that he was seen in urgent care the day before, that his leg was splinted, and that he was unable to bear weight. When questioned as to how he was working light-duty if he was unable to

bear weight, Claimant responded that he was using crutches. However, he later clarified that he was using crutches only until December.

On redirect examination, Claimant testified that he was experiencing popping in his knee prior to seeing Dr. Shock in March of 2020, and the continued popping and pain caused him to seek medical attention. He also stated that he told the doctor at MedExpress in March of 2020 about his accident at work. Claimant also clarified that he had not undergone any previous surgery on his knee and that the surgery referenced in the March 3, 2020, MedExpress records, was in reference to his prior shoulder surgery in 2001 or 2002. Lastly, he confirmed that the reason he had not sought medical treatment after November of 2019, was because he did not have any insurance; however, he stated that his insurance card arrived in the mail a week or so prior to him going to MedExpress in March of 2020. He testified that the incident at home when he was stepping out of the shower was not a new injury.

Mr. Billy Brad Grooms testified that he held the position of safety manager while working for Respondent-Employer. He stated that Claimant was provided light-duty work after his injury, and Mr. Grooms did not believe that Claimant could do the light-duty work in the shop without being mobile at least part of the time. He also said that when counting trucks, Claimant would occasionally have to walk to the truck to speak with the drivers, hand them tickets, and obtain a signature. He also testified that Claimant was paid the same wages as when he was driving a truck.

Mr. Grooms testified that he encouraged Claimant to go back to the doctor for follow-up on his knee, as the goal was to get Claimant back to driving a dump truck. Grooms stated that he was not aware that Claimant's insurance was an issue. He testified that Claimant would not have been permitted to use crutches while performing his light-duty work because the use of crutches

was considered a safety hazard in that work environment. When he observed Claimant working light-duty, Grooms said did not see Claimant using crutches in the work area.

On cross-examination, Mr. Grooms testified that he visited the various job sites several times a week. Although he could not state when or how often he had observed Claimant working light duty, he stated that during his visits to the site, he had witnessed Claimant counting the trucks, walking out to the trucks, and obtaining paperwork from the drivers.

Medical Exhibits:

After a thorough review of the medical exhibits, the relevant medical records are summarized below.

Medical records showed that on October 14, 2019, Claimant presented at St. Vincent Emergency Room with complaints of left shoulder pain, right knee pain, and head pain. Hospital records indicated that Claimant was ambulatory and could walk unaccompanied; however, a physical examination of the right knee showed tenderness and swelling. An x-ray of his tibia/fibula showed “normal alignment, normal soft tissue, . . . cannot r/o a small chip fx to his proximal tibia, may be old. Otherwise, nothing acute.” The impression of Claimant’s right knee was “[d]egenerative changes, no acute trauma.” Claimant was discharged and instructed to rest and relax for the rest of the day. Claimant was prescribed pain medication and limited to no work for three (3) days. He was given an ACE bandage for the right knee and crutches and instructed to see his PCP if his pain continued.

On October 21, 2019, Claimant visited a second emergency room at Baptist Health with complaints of right knee pain and left shoulder pain. Claimant reported that he was previously seen in another emergency room, but claimed he was not given “follow up or clear discharge instructions.” He reported that the pain in his knee was intermittent and the pain in his shoulder

was with range of motion. Hospital records showed a past shoulder surgery. A review of systems showed that Claimant was positive for arthralgias, and a physical examination of Claimant's musculoskeletal area showed that Claimant exhibited "tenderness" but had "normal range of motion." An x-ray of Claimant's left shoulder revealed normal findings. An x-ray of his right knee revealed mild tricompartmental degenerative osteoarthritic changes; no joint effusion; no radio-dense foreign body; and no suspicious lytic or blastic lesion. Claimant was assessed with the following: motor vehicle collision, subsequent encounter; arthralgia of the right knee; and left shoulder pain, unspecified chronicity. Upon discharge, his instructions included: to rest and elevate the painful area; to apply an ace bandage; to call the doctor if symptoms persisted; to perform range of motion exercises as directed; and to consider physical therapy.

Claimant saw Dr. Mark Larey on November 5, 2019, for his right knee pain, left shoulder pain, and left palm pain. Claimant denied a head injury. Dr. Larey examined Claimant's left shoulder and right knee, finding very limited range of motion and crepitus with very limited PROM in the shoulder and limited range of motion and crepitus with minimal range of motion in the right knee. Claimant's left palm showed no signs of bruising, swelling, or visible wound. Dr. Larey noted that the injuries were related to work activities and imposed activity modifications of "sit down job only" and "no commercial driving." The subsequent MRI of Claimant's right knee revealed the following:

Exam is limited by low magnetic field strength.

1. Edema in the medial tibial plateau suggestive of contusion. No linear fracture line seen.
2. Poor visualization of the anterior cruciate ligament. Correlation for instability and possible anterior cruciate ligament tear recommended.
3. Blunting of the free edge of the medial meniscus with horizontal signal in the posterior horn medial meniscus. Findings may reflect horizontal tear of

the posterior horn. Blunting of the free edge may also reflect tear or changes of prior meniscectomy.

The MRI of Claimant's left shoulder revealed edema and/or effusion in the acromioclavicular joint, but was otherwise normal.

There were no additional medical records until March 3, 2020, when Claimant presented at MedExpress. There, Claimant reported right knee pain after he stepped out of shower and experienced popping in his right knee. Claimant told medical personnel that his pain was moderate and that it was worse with movement. Claimant reported his recent work accident from October 19, 2019, and reported that his pain continued to worsen. He denied swelling, contusion, bleeding, laceration, and abrasion. The medical report states that Claimant "denies work related, No known injury. While playing sports, Struck with blunt object. Reports Hx of similar Sx's in past." An examination of Claimant's right knee showed a right-sided limp; right knee tenderness to palpation to anterior aspect; limited range of motion due to pain; no obvious fractures or deformities; and peripheral pulse at 2+. A splint was placed on Claimant's right knee. X-ray imaging showed moderate joint effusion with questionable tibial spine avulsion fracture. Claimant was instructed to take over the counter medication for pain; apply ice/heat as needed; elevate the extremity; use crutches as needed; remain non-weight bearing; and follow up with an orthopedist.

Claimant saw Dr. Ethan Shock on March 5, 2020. Dr. Shock noted that Claimant had been in a prior work-related motor vehicle accident and that he presented that day for an orthopedic evaluation of his right knee. Dr. Shock noted that Claimant's previous MRI from November of 2019 was suggestive of a tibial spine avulsion with poorly defined anterior cruciate ligament with no other instability or ligamentous injury. Dr. Shock noted that Claimant was seen at urgent care the day before and that his leg was splinted. Claimant's physical examination showed a large effusion at the right knee with limited range of motion secondary to the effusion; pain with

palpation over the medial joint line; benign lateral joint line; negative McMurray's test; a 2+/3 anterior translation with both anterior drawer and Lachman's testing; negative posterior drawer; soft and nontender popliteal space; intact extensor mechanism; and atrophic quadriceps. Dr. Shock placed Claimant in a knee immobilizer and ordered an MRI to rule out internal derangement and ACL disruption with meniscal tear.

Claimant returned to Dr. Shock on March 12, 2020. Dr. Shock's notes indicated that he was complaining of right knee pain. A physical examination showed the following:

[A] large effusion about the RIGHT knee. Range of motion is limited secondary to this. There is pain with direct palpation over the medial joint line. Lateral joint line is benign. McMurray's test is negative. There is 2+/3 anterior translation with both anterior drawer and Lachman's testing. Posterior drawer is negative. Popliteal space is soft and nontender. Extensor mechanism is intact. Quadriceps are atrophic.

Hip and ankle are grossly within normal limits. Leg and thigh compartments are soft. The patient is neurovascularly intact.

X-rays of Claimant's right knee showed the following: no signs of fracture or gross malalignment; neutral alignment; and minimal degenerative changes at the medial, lateral, and patella femoral compartment. Claimant was assessed with right knee "internal derangement, finally, the ACL disruption." Claimant was given the immobilizer and an MRI was ordered to further evaluate and rule out internal derangement, ACL disruption with meniscal tear.

An MRI of Claimant's knee performed on March 12, 2020, revealed a complex tear or prior partial meniscectomy involving the posterior horn and body medial meniscus; chondromalacia of the medial compartment and medial facet of the patella; and large joint effusion.

Claimant returned to Dr. Shock on March 18, 2020, for his right knee. Dr. Shock referenced Claimant's last MRI from November of 2019 (the time of his initial injury), which was suggestive of a tibial spine avulsion of the ACL. He noted that Claimant had since had a new onset of mechanical symptoms. He explained that the most recent MRI was suggestive of a tear

of the anterior cruciate ligament; a complex tear of the posterior horn and body of the meniscus; and some diffuse degenerative changes. Dr. Shock noted that Claimant had been in a knee immobilizer since his last visit; that he had been weightbearing as tolerated in the brace; and that he had been using crutches; and he has had several new bouts of instability with the knee. Dr. Shock assessed him with a rupture of the anterior cruciate ligament and a tear of the medial meniscus of the knee. He explained his surgical recommendation was a right knee arthroscopy with ACL allograft reconstruction.

Claimant's last visit with Dr. Shock was on April 9, 2020. Dr. Shock and Claimant discussed the surgical procedure again, and Claimant was instructed to use the knee immobilizer as directed. Dr. Shock noted that the surgery for the displaced fracture of the right tibial spine would be arranged "in the near future."

ADJUDICATION

A. Compensability:

It is well-settled that under Arkansas workers' compensation law that an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Hickman v. Kellogg, Brown & Root, 372 Ark. 501, 277 S.W.3d 591 (2008). 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 workers' compensation is sought. Id. An aggravation is a new injury resulting from an independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. Id. at 511-12, 277 S.W. 3d at 600.

Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 442 (1947).

Claimant contends that he sustained a compensable injury to his right knee when he was involved in a motor vehicle accident while performing his employment duties for Respondent-Employer.¹ Respondents have controverted this claim in its entirety, asserting that Claimant's complaints are pre-existing and not the responsibility of the Respondents.

A review of the evidence demonstrates that Claimant proved by a preponderance of the evidence that he sustained a compensable right knee injury during and in the course of his employment with Respondent-Employer on October 12, 2019, and that the injury caused internal harm to the body which required medical services.

Claimant credibly testified he sustained an accidental injury to his right knee while driving a dump truck on the way to a dump site. The brakes in the truck malfunctioned resulting in a motor vehicle accident where the truck flipped onto its side as Claimant made a quick right turn to avoid hitting other vehicles and a train that was stopped across the road at the upcoming intersection. At

¹ Claimant sustained other minor contusions/injuries in the motor vehicle accident, and those injuries have resolved. The main issue at hand is Claimant's knee injury.

the time of the event, Claimant had pain in his left shoulder, pain in his right knee, a lump on his forehead, and sharp pain in the palms of his hands. Claimant's account of the incident is credible and corroborated by the medicals. His description of the incident is also consistent with the injuries he sustained.

Here, Claimant was in a caravan behind his supervisor when the accident occurred; therefore, his supervisor and Grant Garrett personnel were aware of the accident and Claimant's involvement. He was instructed to seek treatment at MedExpress if he needed additional medical care. Claimant ultimately went to the emergency room two (2) days later with the same complaints of pain as he reported at the scene of the accident. Claimant gave hospital personnel a history of having injured himself at work when he was involved in a motor vehicle accident. A physical examination showed tenderness and swelling in the right knee. An x-ray of his right tibia/fibula was normal except that it could not rule out a small chip fracture to the proximal tibia. Degenerative changes were noted; otherwise, there were no acute findings. Claimant was restricted from working for three (3) days; his knee was bandaged; he was given crutches; and he was prescribed pain medication and muscle relaxers.

When Claimant's symptoms did not improve, he went to a second emergency room a week later. A second set of x-rays of his right knee revealed mild tricompartmental degenerative osteoarthritic changes, but otherwise normal. He was assessed with arthralgia of the right knee and instructed to elevate and bandage the knee.

When Claimant saw Dr. Larey, the company doctor, in November, he noted a limited range of motion and crepitus with minimal range of motion in the right knee. He opined that Claimant's injuries were related to work activities and imposed activity modifications of "sit down job only" and "no commercial driving." The MRI, which was noted to be limited by low magnetic field

strength, showed edema suggestive of a contusion, poor visualization of the anterior cruciate ligament and correlation for instability and possible anterior cruciate ligament tear, and findings that could reflect horizontal tear of the posterior horn and possible tear or changes of prior meniscectomy.

On March 3, 2020, Claimant reported to MedExpress that his pain was worsening since his October 12, 2019, work-related accident, and that his knee popped when he stepped out of the shower, which then prohibited him from any weightbearing activity. Claimant's right knee was tender; he was limping; and he had limited range of motion. His knee was splinted. X-rays showed moderate joint effusion with questionable tibial spine avulsion fracture; thus, he was instructed to see an orthopedist.

Claimant's previous MRI findings were ultimately confirmed by a subsequent evaluation and MRI by specialist Dr. Shock. Dr. Shock's initial evaluation revealed swelling at the right knee with limited range of motion secondary to the swelling and pain with palpation over the medial joint line. He placed Claimant in a knee immobilizer. After an additional MRI confirming a rupture of the anterior cruciate ligament and a tear of the medial meniscus of the knee, Dr. Shock recommended arthroscopic surgery.

Between the testimony and medical records, it is clear that Claimant has consistently complained of ongoing knee pain since the October 12, 2019, work-related motor vehicle accident, and has experienced popping, tenderness, limited range of motion, edema, and swelling in his right knee which resulted in treatment with prescription pain medication, splinting of the leg, and ultimately a knee immobilizer. MRI findings confirmed a rupture of the anterior cruciate ligament and a tear of the medial meniscus of the knee. Claimant credibly testified and the medical records corroborated that Claimant had not previously suffered a knee injury or undergone any prior knee

surgery on either knee. Claimant explained that he had previously undergone shoulder surgery when he was in the eleventh grade and that any reference to prior surgery or injury in the medical records was in reference to his shoulder. I find this testimony to be credible.

While Claimant had a gap in medical treatment, he credibly testified that he was waiting on his health insurance from Respondent-Employer to become effective and that he was unable to afford the treatment on his own. Claimant was not completely immobile, but consistently complained of pain. Medical records also showed various signs of knee injury including tenderness, swelling, and so on. Imaging also suggested signs of injury, which was confirmed once Claimant received treatment by a specialist.

I also recognize that there was much discussion of a statement in Claimant's MedExpress March 3, 2020, medical record which read, "Denies work related, No known injury. While playing sports, Struck with blunt object. Reports Hx of similar Sx's in past." However, I am not persuaded that this statement was in reference to Claimant's right knee. Rather, I find that the evidence establishes that Claimant consistently reported a previous shoulder injury from 2001 or 2002 that required surgery. He also credibly testified that he had not previously injured his knee and had not undergone any prior knee surgery. There was no testimony elicited from any witnesses or any documentary evidence to prove otherwise. Therefore, I am convinced that the notes in the medical record from that day are referencing his prior shoulder surgery as Claimant has not incurred any prior injury to his right knee.

Hence, I find Claimant's right knee injury is established by medical evidence supported by objective findings, including but not limited to the March 12, 2020, MRI of Claimant's right knee revealing a tear of the anterior cruciate ligament and a complex tear of the posterior horn and body of the meniscus.

Therefore, due to all of the foregoing reasons, I find that Claimant has established by a preponderance of the evidence all of the elements necessary to establish a compensable right knee injury on October 12, 2019.

B. 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). Claimant bears the burden of proving that he is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W. 2d 543 (1999).

On the basis of the record as a whole, and after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that all of the medical evidence of record is causally related to Claimant's compensable right knee injury of October 12, 2019. I, therefore, further find that Claimant has sustained his burden of proving by a preponderance of the evidence that all of the medical treatment of record is reasonably necessary in connection with the compensable injury he received on October 12, 2019, namely, to his right knee. Dr. Shock has recommended surgery for Claimant's rupture of the anterior cruciate ligament and tear of the medial meniscus. Given the findings of the MRI, the fact that Claimant was still experiencing symptoms in the right knee, and considering the lack of any prior right knee symptoms, I find that this recommendation for surgery for the meniscus tear is reasonably necessary in connection with the injury received by Claimant on October 12, 2019.

Hence, Respondents are therefore liable for this medical treatment of record and for the arthroscopic surgery for Claimant's anterior cruciate ligament rupture and medial meniscus tear that is recommended by Dr. Shock.

C. Temporary Total Disability from Claimant's date of termination to a date yet to be determined:

Claimant contends that he is entitled to temporary total disability compensation from the date of his termination from Respondent-Employer to a date yet to be determined.

Claimant suffered an injury to his right knee during his October 12, 2019, work-related incident. His right lower extremity knee injury is a scheduled injury. An employee who has suffered a scheduled injury is entitled to compensation for temporary total disability during his healing period or until the employee returns to work, whichever occurs first. Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing the disability has become more stable and if nothing further in the way of treatment will improve that condition, the healing period has ended. Id.

After Claimant sustained a compensable injury to his right knee on October 12, 2019, he continued working at light-duty, making the same wages as before the work-related motor vehicle accident until he was laid off by Respondent-Employer for lack of work. Claimant had been off work since that time. Claimant testified that he had received unemployment benefits and pandemic unemployment benefits while off work from Respondent-Employer, and he had looked for work within his limitations. In the meantime, Claimant had also continued to seek medical treatment from MedExpress and then Dr. Shock, for his right knee symptoms. As of the date of the hearing, Claimant was awaiting arthroscopic surgery for his work-related motor vehicle accident.

In summary, the medical evidence and Claimant's testimony demonstrate that Claimant has remained within his healing period. Although Claimant returned to work after his work-related motor vehicle injury, he was terminated by Respondent-Employer due to lack of work and has not worked since that time.

Under these circumstances, I find that Claimant proved by a preponderance of the evidence his entitlement to temporary total disability compensation from the date Claimant was terminated from employment with Respondent-Employer until the end of a reasonable healing period after recovery from arthroscopic surgery when he is released at maximum medical improvement by Dr. Shock.

D. Attorney's Fee:

Respondents have controverted this claim in its entirety. Therefore, Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein to Claimant, pursuant to Ark. Code Ann. § 11-9-715.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704.

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. I hereby accept the above stipulations as fact.
3. Claimant proved that he sustained a compensable right knee injury when he was involved in a motor vehicle accident while working for Respondent-Employer on October 12, 2019.
4. Claimant proved by a preponderance of the evidence that the medical treatment of record, to include treatment and surgery by Dr. Shock, was reasonably necessary in connection with his compensable right knee injury of October 12, 2019.
5. Claimant proved by a preponderance of the evidence that he was entitled to temporary total disability compensation from the date Claimant was terminated from employment with Respondent-Employer until the end of a reasonable healing period after recovery from arthroscopic surgery when he is released at maximum medical improvement by Dr. Shock.
6. Claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715.

AWARD

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by Claimant.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE