

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H004413

STEPHEN L. JOHNSON,  
EMPLOYEE CLAIMANT

PULASKI COUNTY SPECIAL SCHOOL DISTRICT,  
EMPLOYER RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION, WCT.,  
CARRIER/TPA RESPONDENT

OPINION FILED APRIL 4, 2023

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

Claimant represented by the HONORABLE DANIEL E. WREN, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE KAREN H. MCKINNEY, 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 July 23, 2022. The Administrative Law Judge found that the claimant has failed to prove, by a preponderance of the credible evidence, that he is entitled to additional medical treatment in relation to his compensable right knee injury of July 2, 2020 and has consequently failed to prove that he is entitled to additional temporary total disability benefits from November 13, 2020, through a date yet to be determined. 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 he is entitled to additional medical treatment to his right knee that was provided by Dr. Siems and additional temporary total disability benefits beginning on November 13, 2020, and continuing to a date yet to be determined.

I. HISTORY

The claimant, now 58 years old, worked for the respondent-employer as a plumber. The claimant sustained an admittedly compensable injury to his right knee in a workplace injury on July 2, 2020. The claimant testified that the accident happened in the following manner:

Q On July the 2<sup>nd</sup>, 2020, do you recall where you were working that day?

A I was working at Mills Middle School.

Q And were you working with anyone?

A Yes, I was working with an apprentice named John.

Q And what were y'all doing there that day? What was the project?

A We had a sink that the water lines had rotted out in the wall and we were having to run new lines from down the wall from up in the ceiling, and ...

...

We were runnin' new water lines down the wall. He was up in the ceiling and I

was under the sink, and we had fixed the lines down in the wall and under the sink. And he hooked 'em up in the ceiling and I hooked 'em up under the sink, and I hooked the sink back up and all, and that's what we were doin'.

...

... I crawled out from under the sink and when I turned and went to get up, I had a pop in my right knee on the inside of my right knee [indicating], and it felt like somebody'd stuck a knife in it.

The claimant was seen at Concentra on the day of the work accident with a complaint of "right knee injury". The claimant was diagnosed with right knee sprain and prescribed Cyclobenzaprine and referred to physical therapy.

The claimant came under the care of Dr. Martin Siems for his right knee injury on July 28, 2020. Dr. Siems ordered a right knee MRI. The MRI, which was performed on August 21, 2020, revealed the following:

**IMPRESSION:**

1. Tricompartmental osteoarthritis with cartilage loss and osteophytes as described above. Findings are advanced in the medial compartment. Subchondral edema at the weightbearing medial femoral and medial tibial condyles related to grade 4 cartilage loss. No fracture identified.
2. Small joint effusion. Very small Baker's cyst.

3. Complex macerated tear involving the posterior horn and body of the medial meniscus. 2 cm loculated ganglion or parameniscal cyst formation along the posterior medial margin of the medial tibial condyle.

4. MCL sprain with surrounding edema and partial intestinal tear of its distal fibers.

Following the MRI, Dr. Siems noted the following plan in his

August 21, 2020, medical report:

PLAN: Will [sic] conditioning therapy for range of motion strengthening exercises and injected his right knee with Celestone Marcaine lidocaine. He tolerated procedure well. We are going to start him in physical therapy. We will see him back in a month. He will continue with light duty sedentary work only.

In his October 12, 2020, record, Dr. Siems noted:

PLAN: We will keep him off work for another month. I will see him being able to return to work current condition [sic]. He needs a total knee arthroplasty. I discussed the risk benefits and alternatives of total knee arthroplasty with him at length today. Begin to press forward with right total knee arthroplasty. We will see him back at the time of surgery.

By letter dated October 14, 2020, Melody Tipton, an insurance adjuster for Arkansas School Boards Association, posed the following questions to Dr. Siems:

I have received your request for total right knee. Prior records indicate Mr. Johnson was treated by you for pain in the right knee, since

approximately 2017, with an apparent report by the injured worker of pain dating to at least 2011. Please describe any new findings following his injury of 07/02/20?

If this is an aggravation of a pre-existing problem, what would be needed to return him to pre-injury status?

In your medical opinion, is the need for the proposed total joint replacement of the right knee more than 51% related to the recent workplace injury[?]

Dr. Siems responded to these questions on November 5,

2020, to wit:

1. [I]ncreased tenderness at medial joint line.
2. His problem is progressive, and will worsen over time.
3. No.

The claimant saw Dr. Adam Smith on December 10, 2020, at

which time Dr. Smith noted:

Plan: He has failed conservative management to date. There is not really anything more that I can offer him other than a knee replacement. I do not see how he can go back to work with no restrictions given the amount of pain he is in. Any type of deep squatting or stooping as well as kneeling will cause him pain. This will severely limit his ability to do his job. I recommend that he have a knee replacement in order to get him back to full function or at least reasonable function. He is wanting to follow back up with Dr. Siems and has an appointment

with him next month so recommend he follow-up with him.

Using his health insurance, the claimant underwent right knee total arthroplasty on March 15, 2021. The claimant suffered an infected right total knee arthroplasty after which it was “removed and replaced with a new femoral component and poly tibial component” on May 17, 2021. The claimant underwent a right total knee revision arthroplasty on August 18, 2021.

By letter dated March 24, 2021, the claimant’s attorney, Daniel Wren, asked Dr. Siems, “Did the July 2, 2020 work incident play ANY role in the need for Mr. Johnson’s total knee replacement?” Dr. Siems replied on March 29, 2021 by placing an “x” by “YES” in response to this question.

Dr. Siems offered testimony in this matter by deposition taken on March 22, 2022. Regarding whether the claimant’s work incident accelerated the claimant’s need for surgery, Dr. Siems offered the following:

BY MS. MCKINNEY:

Q So within a reasonable degree of medical certainty, the injury is not what caused the need for the surgery?

A I think it certainly tipped the course towards joint replacement.

...

Q And Mr. Johnson, we knew back in 2018 that at some point in time Mr. Johnson was going to need a total knee replacement?

A Correct.

Q Can you state within a reasonable degree of medical certainty that the work-related incident caused that need for surgery to accelerate?

A Yes.

Q Is that – you shook your head. What did you say?

A Yes.

Q And how so?

A Well, from his report, he was getting by just fine and doing okay up until the point where he had this injury at work. And from then, he just wasn't able to return. He had increased pain about the knee. And so it had to have had some role in this downhill progress that he made to end up needing a total joint replacement.

...

BY MR. WREN:

Q Dr. Siems, you used the term during your examination by Mrs. McKinney that the on-the-job incident tipped the course of treatment. Can you explain what you mean by 'tipped the course of treatment'?

A Well, as we've established through the notes, he had a problem with his knee, and when we would get to the point of doing a total knee replacement is multifactorial like we've talked. It really has to do with just how much pain somebody's in on a daily basis and how it affects the function of their knee and their ability to work or go fishing or whatever is important to them at the time. And so by tipping the – however I said it – the course of treatment, it's always something that tips the hand for doing a total joint. You know, people don't start – or it's typically something, whether it's a work injury or a car wreck or I guess sometimes it just occurs gradually over time, but in his situation, he was functioning and working and was able to work and then he couldn't after this incident at work.

Dr. Siems also clarified the claimant's work status at that time:

Q Has he reached the end of his healing from the resection?

A Not quite. I mean, he's not where I'd like him to be, but he's getting better.

Q Would he be able to work at this point in time in his recovery?

A I believe we have him off work. I'm not certain to what the last work status was. It depends on the job.

Q If light duty were made available, would he be able to work light duty?



A It just depends on what the light duty was.  
He can do a sedentary job.

The last medical record available to the Commission is dated January 20, 2022 and indicates that the claimant was to return to see Dr. Siems in six (6) months.

The claimant had pre-existing osteoarthritis in both of his knees. The claimant underwent a left total knee replacement in 2017. Regarding the problems he was having in his right knee prior to the work accident, the claimant testified as follows:

Q From the time that you returned back to work after your surgery in 2017, did you occasionally have pain in your right knee?

A Every great once in a while.

Q Did it ever make you miss work?

A No.

Q Did it ever make you refuse an assignment?

A No.

Q Were you written up for performance issues related to your right leg?

A No, I was not.

A Pre-hearing Order was filed on December 8, 2021. “The claimant contends that he injured his right knee while working under a sink

at the science lab at Mills Middle School on July 2, 2020, when he felt a pull in his knee when he attempted to get up. That the claimant was diagnosed with a complex macerated tear involving the posterior horn and body of the medial meniscus and a sprain of his MCL. That in November of 2020 an adjuster for the Respondent, Arkansas School Board Association asked Dr. Martin Siems, who has recommended a total knee replacement for the Claimant, whether or not the injury on July 2, 2020, was the ‘major cause’ for the need for a total knee replacement. Dr. Siems responded that it was not the ‘major cause’ of the total knee replacement.

However, in response to the claimants [sic] attorney on March 29, 2021, Dr. Siems indicated that the July 2, 2020, work incident did play some role in the need for the Claimant’s total knee replacement.

The Respondents have controverted this claim as of November 13, 2020, and stopped payment for any medical treatment and stopped payment of temporary total disability benefits.”

“Respondents contend that the claimant has received all benefits to which he is entitled. Respondents contend that the claimant’s present disability and need for a total knee replacement are not related to his compensable injury of June 2, 2020, but to his pre-existing degenerative condition. The claimant sought orthopedic medical treatment for bilateral knee pain at least as early as 2017, and he underwent a total knee replacement around the same time. The claimant sustained a right knee

sprain on June 2, 2020, which is confirmed by the August 21, 2021 [sic] which also revealed severe degenerative findings of tricompartmental osteoarthritis with cartilage loss, small joint effusion, very small Baker's cyst, complex macerated tear of the posterior horn, and the MCL sprain. The total knee replacement recommended by Dr. Adam Smith is causally related to claimant's pre-existing degenerative condition and not his compensable injury."

The parties agreed to litigate the following issues:

(1) Whether the Claimant is entitled to additional medical treatment and associated expenses in relation to his comparable right knee injury of July 2, 2020.

(2) Whether the Claimant is entitled to temporary total disability benefits from November 13, 2020, through a date yet to be determined; and,

(3) Attorney's fees in relation to controverted indemnity benefits.

After a hearing, an Administrative Law Judge filed an opinion on June 23, 2022. The Administrative Law Judge found:

1. The parties' stipulations are accepted as findings of fact herein, inclusive of the Commission's jurisdiction over this claim;

2. The claimant has failed to prove, by a preponderance of the credible evidence, that he is entitled to additional medical treatment in relation to his compensable right knee injury of July 2, 2020, and has consequently failed to prove that he is entitled to additional temporary

total disability benefits from November 13, 2020, through a date yet to be determined; and,

3. All other issues are reserved.

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 he 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). A claimant does not have to support a continued need for medical treatment

with objective findings. *Chamber Door Industries, Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

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).

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury; the basic test is whether there is a causal connection between the two episodes. See generally *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001); *Air Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000); *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

The claimant had a pre-existing degenerative condition that was aggravated by his work accident. The respondents accepted this injury as compensable and provided treatment until November 13, 2020.

Because the claimant's right knee was not improving with conservative treatment, Dr. Siems recommended that the claimant undergo

a right total knee arthroplasty. Additionally, Dr. Adam Smith examined the claimant on one occasion and also determined that the claimant needed a total knee arthroplasty. Therefore, the Full Commission finds that the right knee total arthroplasty was reasonably necessary. Also, we find that the subsequent interventions that occurred following the right knee arthroplasty infection are compensable consequences of his compensable right knee injury.

The remaining issue is whether the reasonably necessary treatment was connected to the claimant's work injury. It is clear that the claimant's work incident was a factor in his need for additional medical treatment. See *Williams, supra*. Although Dr. Siems indicated that he had discussed a right total knee replacement as a possible treatment option for the claimant in 2018, he also testified that, the need for a total joint replacement "really has to do with just how much pain somebody's in on a daily basis and how it affects the function of their knee and their ability to work". Dr. Siems explained that there is always something that "tips the hand for doing a total joint" and "in [the claimant's] situation, he was functioning and working and was able to work and then he couldn't after this incident at work". Additionally, Dr. Siems unequivocally testified that the work-related incident accelerated the claimant's need for a right knee arthroplasty.

In addition to Dr. Siems' testimony, the claimant testified that prior to his work accident, he had no plans to have a right knee replacement. The claimant explained that because he received such significant relief from his left knee replacement, there was no need for him to undergo the right knee replacement.

The claimant's work accident does not have to be the major cause for the need for treatment, it merely has to be a factor in the need for treatment. The claimant's July 2, 2020, work accident was clearly a factor in the claimant's need for the right total knee arthroplasty. Thus, based on the aforementioned, we find that the surgery is reasonable, necessary, and causally connected to the claimant's compensable injury.

Therefore, the Full Commission finds that the claimant has proven by a preponderance of the evidence that he is entitled to reasonable and necessary medical treatment provided in relation to his compensable right knee injury, including a right knee arthroplasty and treatment that was provided following his right knee arthroplasty infection.

#### **B. Additional 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. It is not necessary for a claimant with a scheduled injury to prove that he 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, he is entitled to temporary total disability benefits during his healing period or until he returns to work, whichever occurs first, regardless of whether he has demonstrated that he 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. In the present matter, the claimant suffered a compensable injury to his right knee. Dr. Siems testified that he had taken the claimant off work and that he believed that he remained off work at the time of his deposition on March 22, 2022. Since the claimant sustained a scheduled injury, remained within his healing period, and has not returned to work, the claimant is entitled to additional temporary total disability.



Based on the foregoing, the Full Commission finds that the claimant is entitled to temporary total disability benefits beginning on November 13, 2020, and continuing to 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 he is entitled to reasonable and necessary medical treatment provided in relation to his compensable right knee injury, including a right knee arthroplasty and treatment that was provided following his right knee arthroplasty infection and additional temporary total disability benefits beginning on November 13, 2020 and continuing to a date yet 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.

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SCOTTY DALE DOUTHIT, Chairman

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M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant is entitled to reasonable and necessary medical treatment provided in relation to his compensable right knee injury; including a right knee arthroplasty and treatment that was provided following his right knee arthroplasty infection and additional temporary total disability benefits beginning on November 13, 2020 and continuing to a date yet to be determined.

As noted by the Administrative Law Judge ("ALJ") in this matter, it is well known that in workers' compensation law, an employer takes the employee as he finds him. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). Employment circumstances which aggravate pre-existing conditions are compensable; however, being a new injury, an aggravation must meet the definition of a compensable injury in order to establish compensability. *Id.* (citing *Farmland Ins. Co. v. DuBois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996)). There is no presumption that a claim is compensable, or that medical treatment is reasonable and necessary. *O.K. Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d. 224 (1979). In determining whether a claimant has sustained his burden of

proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; *Wade v. Mr. C Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987). When it comes to statements made by the claimant as a witness, the credibility and weight of those statements are within the exclusive providence of the Commission. *Yates v. Boar's Head Provisions Co.*, 2017 Ark. App. 133, 514 S.W.3d 514 (2017). In fact, determinations of compensability may hinge entirely upon the Commission's determination of weight and credibility. *Id.*

In the present case, the claimant was the only individual to testify at the March 29, 2022 hearing. Dr. Martin Siems testified via deposition taken March 22, 2022. The claimant testified that prior to his July 2, 2020 right knee injury, he had suffered from bilateral knee arthritis "for a while," and Dr. Siems performed a total left knee replacement in 2017. (Tr., P. 16; Resp. Med. Ex., Pp. 37-38). It is noted throughout the claimant's medical records that he suffered from osteoarthritis in both knees for years before his compensable right knee injury on July 2, 2020. (See Resp. Med. Ex., P. 16). Dr. Siems noted in his clinical report dated December 1, 2017, "Arthritis knees/ DJD; chronic/ both knees." (See Resp. Med. Ex., Pp. 34-36). He was prescribed several narcotics for pain management for a number of years prior to his 2020 injury and received a steroid injection to address his right knee pain in 2018. Dr. Siems noted in his deposition he

injected the claimant's right knee to decrease the inflammation caused by arthritis. (See. Resp. Med. Ex., P. 31; Joint Ex. 1, P. 12-13).

The claimant ultimately returned to Dr. Siems following his 2020 injury when, according to his testimony, he could no longer put on his own shoes or socks or walk to his dock to go fishing. (Tr. P. 19; 22-23). At that time, Dr. Siems reported significant osteophyte formation and joint space narrowing in the right knee consistent with previously diagnosed osteoarthritis. (Cl. Med. Ex., P. 21). MRI results showed tricompartmental osteoarthritis with severe, grade four, cartilage loss. (Cl. Med. Ex., P. 25.) Dr. Siems agreed in his deposition testimony that these findings are degenerative. (Joint Ex. 1, P. 19-20). There was, however, a complex macerated tear of the medial meniscus; however Dr. Siems testified this was also a degenerative finding, and that the macerated tear pre-existed the claimant's 2020 injury. *Id.* The claimant ultimately underwent a total right knee replacement paid by his private health insurance on March 15, 2021. The preoperative and postoperative diagnoses were both right knee osteoarthritis. (Tr., Pp. 23-24; Cl. Med. Ex., Pp. 57-58). Dr. Siems conducted both the initial knee replacement and subsequent revisions. (Tr., Pp. 24-25; Cl. Med. Ex., Pp. 57-58, 70, 72-73). Dr. Siems' stated during his deposition that the claimant needed a right knee replacement "because he was having symptomatic arthritis of the knee;" however, his testimony reflects that he believes that the 2020 injury may have tipped the course

towards knee replacement. (Joint Ex 1., Pp. 21, 23-24). “[W]here a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty.” *Huffy Serv. First v. Ledbetter*, 76 Ark. App. 533, 69 S.W.3d 449 (2002) (citing *Howell v. Scroll Tech.*, 343 Ark. 297, 35 S.W.3d 800 (2001)). However, expert opinions based upon “could,” “may,” or “possibly” lack the definiteness required to meet claimant’s burden to prove the causal connection. *Id.* (citing *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000)).

The claimant was first seen by Dr. Siems on October 4, 2017 and on the intake form indicated he was having issues with both his left and right knees. (Tr., Pp. 6-7). During his initial examination by Dr. Siems, he complained of bilateral knee pain and Dr. Siems found the examination of the left and right knee to be identical. *Id.* at 9. According to Dr. Siems’ notes, the x-ray revealed arthritis in the right knee. *Id.* at 10. At the time of the initial visit with Dr. Siems, the claimant described the pain as moderate in his left and right knees and noted the pain level was 8 out of 10 in both knees. *Id.* at 23. Dr. Siems injected the claimant’s right knee because of the pain. *Id.* In a follow-up visit on February 13, 2018, Mr. Johnson complained to Dr. Siems of continued pain in his right knee and was assessed with right knee arthritis. *Id.* at 12-13. According to Dr. Siems, as early as February 2018 a total right knee replacement was a possibility. (Tr., P. 14). Prior to

the claimant's compensable right knee injury on July 2, 2020, the claimant was taking several medications used for arthritic pain including ketoprofen, gabapentin, meloxicam, Lidoderm, and hydrocodone. *Id.* at 16. Dr. Siems stated during his deposition that the osteophyte formation, joint space narrowing, severe osteoarthritis, and diffuse crepitus predated the injury on July 2, 2020 and were not caused by the compensable injury on July 2, 2020. *Id.* at 16-17. Likewise, he stated in his deposition that the MRI findings of tricompartmental osteoarthritis with cartilage loss and macerated tear of the medial meniscus were degenerative findings and not caused by the July 2, 2020 compensable injury. *Id.* at 18-20. According to the deposition testimony of Dr. Siems, the claimant required a total knee replacement because he was having symptomatic arthritis of the knee. *Id.* at 21.

It is clear from the evidence that as far back as October 4, 2017, nearly three (3) years prior to the compensable injury on July 2, 2020, the claimant was being treated for several degenerative right knee issues. This treatment consisted of multiple prescription medications and injections. His treating physicians noted as early as 2017 that he was going to be a candidate for right knee replacement as a result of his severe degenerative condition. Injured employees have the burden of providing by a preponderance of the evidence that the medical treatment sought is reasonable and necessary for the treatment of a compensable injury.

*Owens Planting Co. v. Graham*, 102 Ark. App. 299, 284 S.W.3d537 (2008).

What constitutes reasonable and necessary treatment is a question of fact for the Commission, and there is no presumption that a claim is compensable or that medical treatment is reasonable and necessary. *Id.*; *O.K. Processing, Inc. v. Servold*, 265 Ark. 352, 578 S.W.2d 224 (1979).

I cannot agree with the majority that the claimant has established that his right knee replacement and continued treatment are causally related to his work-related injury. The claimant had been receiving treatment for severe degenerative problems in his right knee for years prior to his June 2, 2020 injury. He was taking numerous prescription medications and receiving steroid injections in his right knee for years prior to his compensable injury. His treating physicians had opined years prior to his compensable injury that he would be a candidate for a total knee replacement of his right knee. The ultimate cause of the claimant's right knee replacement was pre-existing osteoarthritis which was symptomatic many years prior to his work injury and it is clear from the record that the cause of the claimant's right total knee replacement was his pre-existing degenerative condition, which predated his compensable injury by many years.

The only medical proof presented concerning causation was the statement by Dr. Siems that the 2020 injury "may" have tipped the course towards knee replacement. The law is clear in this State that expert opinions based upon "may" lack the definiteness required to meet the

claimant's burden to prove the causal connection and does not meet the standard of proof within a reasonable degree of medical certainty.

For the reasons stated above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner