

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO.: H000856**

FELECIA D. LEWIS-FELDERS, Employee	CLAIMANT
PULASKI COUNTY SPECIAL SCHOOL DISTRICT, Self-Insured Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS' ASSOCIATION WORKERS' COMPENSATION TRUST, Carrier/TPA	RESPONDENT

OPINION AND ORDER FILED MAY 5, 2022

Hearing conducted before ADMINISTRATIVE LAW JUDGE TERRY DON LUCY, in Pulaski County, Arkansas.

Counsel for the Claimant: HONORABLE GARY DAVIS, Attorney at Law, Little Rock, Arkansas.

Counsel for the Respondents: HONORABLE CAROL L. WORLEY, Attorney at Law, Little Rock, Arkansas.

Statement of the Case

The above-captioned matter came on for a hearing on March 8, 2022, before the undersigned Administrative Law Judge. A pre-hearing Order was entered in this matter on December 30, 2021, which reflected the following stipulations:

- (1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim;
- (2) The employee/employer/TPA relationship existed at all relevant times, including February 7, 2020, on which date the Claimant sustained compensable bilateral knee contusions for which certain benefits have been paid by the Respondents; and,
- (3) The Claimant's average weekly wage on February 7, 2020, was sufficient to entitle her to compensation rates of \$389.00 and \$292.00 for temporary total and permanent partial disability benefits, respectively.

The pre-hearing Order also reflected the issues to be adjudicated, as set forth below:

- (1) Whether the Claimant sustained a compensable injury in the form of patellar-femoral chondromalacia on February 7, 2020, and is entitled to reasonably necessary medical care and related expenses associated therewith, as well as temporary total disability benefits from March 17, 2021, through a date yet to be determined;
- (2) Whether the Claimant is otherwise entitled to additional reasonably necessary medical care in association with her compensable bilateral knee contusions sustained on February 7, 2020; and,
- (3) Attorney's fees in relation to controverted indemnity benefits.

All other issues were reserved. During preliminary discussions, the Pre-Hearing Order of December 30, 2021, was introduced into the record without objection as Commission's Exhibit No. 1. (TR 8) The parties' respective exhibits were likewise introduced into the record without objection. (TR 8-10) Also during preliminary discussions, Counsel for the Respondents affirmed that the Respondents had accepted contusion injuries to the Claimant's knees but had denied subsequent treatment for her patellar-femoral chondromalacia. (TR 7)

Findings of Fact and Conclusions of Law

- (1) The parties' stipulations are accepted as findings of fact herein, inclusive of the Commission's jurisdiction over this claim;
- (2) The Claimant has proven, by a preponderance of the evidence, that she sustained a compensable aggravation of a pre-existing bilateral knee condition on February 7, 2020, is entitled to reasonably necessary medical care and related expenses associated therewith as provided by Dr. Joel Smith and providers ancillary to his care, temporary total disability benefits from March 17, 2021, through a date yet to be determined, and attorney's fees in relation to controverted indemnity benefits; and,
- (3) All other issues are rendered moot.

Applicable Law

The party bearing the burden of proof in a workers' compensation matter must establish such by a preponderance of the evidence. See Ark. Code Ann. §§11-9-704(c)(2) and 11-9-705(a)(3).

With respect to "specific incident" injuries, a claimant must prove, by a preponderance of the evidence, that he or she sustained an "accidental injury causing internal or external physical harm to the body...arising out of and in the course of employment" and which is identifiable by time and place of occurrence. Ark. Code Ann. §§11-9-102(4)(A)(i) and (E)(i). The alleged injury must also occur at a time when "employment services" were being performed and must be established by medical evidence supported by "objective findings." Ark. Code Ann. §§11-9-102(4)(B)(iii) and (D). In turn, "objective findings" are those findings "which cannot come under the voluntary control of the patient." Ark. Code Ann. §11-9-102(16)(A)(i).

It is well-known that, under Arkansas Workers' Compensation Law, an employer takes the employee as he finds him and that employment circumstances which aggravate pre-existing conditions are compensable. *Nashville Livestock Comm'n v. Cox*, 302 Ark. 69 (Ark. 1990). However, being a new injury, an alleged "aggravation" must meet the same statutory requirements as an initial compensable injury. *Farmland Ins. Co. DuBois*, 54 Ark. App. 141 (Ark. App. 1996)

With respect to temporary total disability benefits, such are payable for unscheduled injuries when an injured employee remains within his or her healing period and suffers a total incapacity to earn wages. *Arkansas State Highway & Transp. Dep't v. Breshears*, 272 Ark. 244 (Ark. 1981) However, with respect to scheduled injuries, such as those presented herein, temporary total disability benefits are to be paid "during the healing period or until the employee

returns to work, whichever occurs first." *City of Fort Smith v. Kaylor*, 2019 Ark. App. LEXIS 546.

Finally, it is long-settled that questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. (See, for instance, *Yates v. Boar's Head Provisions Co.*, 2017 Ark. App. 133 (2017). It is further well-settled that determinations of compensability may turn solely upon matters of weight and credibility, particularly when such matters relate to a given claimant's credibility. (See *Yates, supra*. In addition, see *Daniel v. Wal-Mart Stores, Inc.*, 2014 Ark. App. 671 (2014); *Kanu-Polk v. Conway Human Dev. Ctr.*, 2011 Ark. App. 779 (2011); and *Lee v. Dr. Pepper Bottling Co.*, 74 Ark. App. 43 (Ark. App. 2011)). Finally, a claimant's testimony is never considered to be uncontroverted. *Gentry v. Ark. Oil Field Servs.*, 2011 Ark. App. 786 (2011) (citing *Nix v. Wilson World Hotel*, 46 Ark. App. 303 (1994)).

Testimony

Felicia D. Lewis-Felders

Upon direct examination, the Claimant testified that she had worked in security for Respondent Employer since 2012 and fell directly on her knees on February 7, 2020, while trying to stop a fight between teenage boys. (TR 11-12) According to her testimony, the Claimant experienced pain in both of her knees post-incident and reported such to her employer "right away." (TR 12-13) Although the Claimant normally worked at Maumelle High School, such was closed due to unforeseen circumstances on February 7, 2020. Consequently, the Claimant volunteered to work at Sylvan Hills High School/Middle School "just to still be at work that day." (*Id.*)

Following the incident, the Claimant received initial treatment with Concentra Medical

Centers and subsequently came under the care of Dr. Eric Gordon. (TR 13) The Claimant tacitly acknowledged that Dr. Gordon had released her on February 26 (presumably of 2020) and testified that her treatment at Concentra's direction consisted of (presumably physical) therapy. (TR at 14) Following her release from Dr. Gordon's care, the Claimant obtained a change-of-physician to Dr. Joel Smith, given her feeling that Dr. Gordon "[W]as not, um, listening to what I was telling him that I was still feeling real bad pain in my knees and it was not normal, 'cause I never had that issue before." (TR 16) In addition, the Claimant participated in the following exchange:

Q: All right. Let's stop for a second. Let's talk about the pain in your knees. Can you describe the pain that you were having; sharp, dull, aching? What was it?

A: All in (sic) the above and there was still swelling.

Q: Okay. Had you had that experience before February the 7th of 2020?

A: No.

Q: And in your job with security in 2012 through 2020, through the date of this accident, I'm assuming probably you've had to break up a few fights in your lifetime.

A: That's right.

Q: Did you ever get injured before February the 7th of 2020?

A: No, not with my knees. No, sir. (TR 16-17)

According to her testimony, the Claimant continued to work for Respondent Employer during her transition from Dr. Gordon to Dr. Smith, the latter of whom she first saw on August 21, 2020. (TR 17-18) The Claimant went on to agree that the Respondents had paid for her treatment with Concentra and Dr. Gordon, as well as her initial treatment with Dr. Smith, but had ceased paying benefits subsequent to September 16, 2020. (TR 18) Thereafter, the Claimant

pursued additional treatment under her "own insurance," and underwent bilateral knee surgeries on January 14, 2021, until which date she had continued working for Respondent Employer. (TR 18-19) Subsequently, the Claimant underwent additional surgeries, inclusive of her right knee on March 17, 2021, and her left knee July 22, 2021. (TR 19-20)

Upon further direct examination, the Claimant agreed and/or acknowledged that she has not returned to work for Respondent Employer since March 17, 2021, had received a light-duty release on February 25 (presumably of 2022) from Dr. Smith, but had been informed by Respondent Employer that no light-duty was available. (TR 20-21)

During cross-examination, *inter alia*, the Claimant essentially acknowledged the accuracy of her medical records with the exception of Dr. Gordon's comments of February 26, 2020. (TR 24-25) The Claimant also participated in the following exchange:

Q: And you got the change of physician and, as your attorney indicated, you saw him on August the 21st of 2020; is that right?

A: Yes, ma'am.

Q: And according to his reports -- again, your attorney has introduced here today -- he indicated that you had patellofemoral syndrome. Is that -- it that -- I mean, do you remember him telling you that?

A: Is this from Dr. Joel Smith or Dr. Gordon?

Q: This is Dr. Joel Smith.

A: Uh, yes, ma'am.

Q: Okay. And he indicated in his report that the most common causes of this are chondromalacia and patellar tendinitis. Did he tell you that?

A: Yes, ma'am.

Q: Okay. And he indicated, also in that report, that surgery was reserved for folks who had cartilage tears or flaps under the

kneecap.

A: That is correct. (TR 25-26)

Also,

Q: Well, Dr. Gordon released you to return to work, right?

A: Correct. Yes, ma'am.

Q: Full-duty and you did return to work.

A: I did. Yes, ma'am.

Q: For about a year after that, full-duty, full-time, is that right?

A: Uh, I believe so.

Q: Yeah, about a year. Because your claiming T.T.D. from 3-17-21 and he released you, it looks like, in the end of February of 2020, so about a year, a little over a year. So if we are to look for off work status when the doctor, you say, kept you off work, that would be in Dr. Smith's reports.

A: Correct. (TR 27)

Upon re-direct examination, the Claimant testified that she was aware of a handwritten response from Dr. Smith, sent by him in reply to an inquiry from the Respondents dated September 16, 2020. Therein, Dr. Smith stated that "Her pain is still present and her M.R.I.s demonstrate tears in the cartilage of bilateral patellas." (TR 28) During re-cross examination, the Claimant acknowledged that she had not reviewed her various MRI reports, had no medical training, and was thus unable to testify with respect to medical diagnoses associated with her MRIs. (TR 31-32)

Medical/Documentary Evidence

I have reviewed the entirety of the medical evidence presented herein, the most salient and relevant of which is discussed below in further detail.

The Claimant presented to Dr. Clint Bearden of Concentra Health Centers on February 7, 2020, for bilateral knee pain associated with her work-related incident of said date. Notably, Dr. Bearden assessed both a "tear" and sprain of the Claimant's left lateral collateral ligament in addition to a sprain of her right medial meniscus. (CX 1 at 1-2) Along with medications consisting of muscle relaxants and anti-inflammatories, Dr. Bearden ordered physical therapy of two weeks' duration. (*Id.*)

A few days later, on February 11, 2020, the Claimant came under the care of Dr. Eric Gordon. Although Dr. Gordon noted mild bilateral swelling of the Claimant's knees, the remainder of his physical exam appears to have been essentially normal other than complaints of pain. (CX 1 at 5) Following normal x-rays, Dr. Gordon assessed bilateral knee contusions and a "possible meniscus tear," and ordered bilateral MRI's of the Claimant's knees. (*Id.*) Such were carried out on February 26, 2020, at which time the reviewing radiologist noted generally normal findings in the Claimant's right knee apart from a small joint effusion, chondromalacia, and a popliteal cyst. (CX 1 at 6) The Claimant's left knee MRI was likewise generally normal with the exception of "high-grade patellofemoral chondromalacia." (RX 1 at 3) Based upon these findings, Dr. Gordon allowed the Claimant to return to regular duty without restriction effective March 2, 2020, and offered a one-month follow-up. (CX 1 at 9; see also RX 1 at 5)

Instead, following the change-of-physician noted in her testimony, the Claimant underwent bilateral knee surgeries on January 14, 2021, performed by Dr. Joel Smith, although the actual record of such does not appear in the submitted medical evidence. Thereafter, the Claimant underwent additional surgeries to both knees, with the right being addressed on March 17, 2021, and the left on July 22, 2021. (CX 1 at 10-13) Both of the subsequent procedures were intended to address "full thickness cartilage defect(s) involving the patella and trochlea." (*Id.*)

Leading up to these procedures, the Claimant had first consulted Dr. Smith for bilateral knee pain on August 21, 2020. On that occasion, Dr. Smith noted that the Claimant's pain was "2 out of 10 currently and 6 out of 10 on a bad day. The pain is associated with *joint swelling*." (CX 1 at 14; emphasis added). Following reviews of the Claimant's previous bilateral MRIs and x-rays of her knees, Dr. Smith noted with respect to patellofemoral syndrome that, *inter alia*, "surgery is reserved for cases with cartilage tears or flaps under the kneecap or cases in which the patella does not track normally." (CX 1 at 15) Dr. Smith administered an injection to the Claimant's left knee on August 21, 2020, and allowed her to return to work the same day, having also noted that "Mrs. Lewis-Felders is still working full time, full duty." (CX 1 at 16)

On September 11, 2020, Dr. Smith noted bilateral knee effusion, which was "mild" on the right, and "moderate" on the left. (CX 1 at 17) In response to a letter from the Respondents dated September 16, 2020, Dr. Smith wrote on October 15, 2020, that:

To the best of my knowledge, her pain is and started as a result of a work injury in February of 2020. Generally, patellofemoral syndrome is treated conservatively and she has been treated conservatively since February with a home exercise program, follow (sic) by formal physical therapy and a steroid injection. Her pain is still present and her MRIs demonstrate tears in the cartilage of the bilateral patellas. At this point, conservative treatment has failed and arthroscopy is a reasonable option. (CX 1 at 20 and 22)

Previously, on September 30, 2020, Dr. Gordon had written as follows:

I received a letter dated 9/16/20 asking for additional treatment recommendations in regards to patient's bilateral knee pain stemming from previous work injury 2/7/20.

I initially saw patient 2/11/2020 at which time MRIs bilateral knees were performed. It was felt that her knee pain was related to contusion and *exacerbation* patellofemoral chondromalacia. She was treated with activity modifications, exercise program, oral anti-inflammatories and had noted improvement. She was therefore discharged from my clinic at MMI on 4/7/2020.

Outside records reviewed from Dr. Joel Smith. Clinic visit 8/21/2020 note in general indicates that patient complained of bilateral knee pain. This was felt to be related to patellofemoral syndrome and patient was prescribed physical therapy and given a left knee steroid injection.

She was then seen for follow-up on 9/11/20 at which point notes indicated that her left knee was still hurting but her right knee felt better. Assessment was the same with patellofemoral syndrome as diagnosis and treatment was bilateral knee arthroscopy.

I reviewed both these clinic notes and do not think that any additional medical intervention is needed in regards to patient's work-related injury as described on 2/7/20. I still believe she has reached maximum medical improvement from that injury as outlined in my clinic notes.

MRI of patient's bilateral knees performed previously showed evidence of patella chondromalacia. There was no evidence of sizable chondral flap patella or bone marrow edema patella or femur to suggest this was from an acute injury. Therefore I believe her patellofemoral chondromalacia and associated syndrome was more likely that not pre-existing to her work-related injury/fall. (CX 1 at 21 and RX 1 at 6; emphasis added.)

Following her bilateral knee surgeries of January 14, 2021, the Claimant followed-up with Dr. Smith on January 26, 2021, at which time he maintained her off-work status for an additional week. (TR 26) In addition, despite reporting a current "6 out of 10" pain level, the Claimant described being "highly satisfied with the current results." (*Id.*) Unfortunately, the Claimant's ongoing symptoms ultimately led to the above-noted additional surgeries performed by Dr. Smith on March 17 and July 22, 2021. During the interim, Dr. Smith stated on June 14, 2021, that the Claimant was to remain off work "until seen back in clinic in 3 months." (CX 1 at 33) Following the Claimant's final surgery, Dr. Smith noted on September 3, 2021, that she "may return to work in a light duty/sedentary job. If this is not available, she needs to remain off work for 6 weeks until her next appointment." (CX 1 at 39) On November 19, 2021, Dr. Smith further directed that the Claimant was to "Continue light duty desk work only for 3 more months." (CX

1 at 43).

The medical evidence concludes with a report issued by Dr. Gordon on January 28, 2022:

I reviewed medical records submitted in regards to patient's additional treatment intervention performed by Dr. Joel Smith. This included left knee MACI and tibial tubercle osteotomy 7/22/21 and right knee MACI/tibial tubercle osteotomy 3/17/21. I reviewed the medical records leading up to those surgeries as well. I also reviewed patient's initial records from her visit at my office as well as initial x-rays and MRI bilateral knees. Patient sustained a work related injury while working as a security officer at a school on 2/7/20. I initially saw her after the injury and x-rays were performed which showed lateral patellar tilt with no evidence of acute bony injury. MRI of the bilateral knees was performed on 2/26/20. MRIs of both of her knees showed evidence of patellofemoral chondromalacia. Specifically however there was no evidence of full-thickness chondral defect and no evidence of bone marrow edema or bone contusion to indicate that this was specifically related or caused by her work injury. Therefore it is within a reasonable degree of medical certainty that I believe additional surgical treatment for chondral defects was more specifically related to pre-existing patellofemoral chondromalacia, patella malalignment/abnormal patellar tilt, and obesity than to her reported work injury. (RX 1 at 7)

Discussion of Respondents' Exhibit No. 2 is not necessary with respect to the findings of fact herein made.

Adjudication

Compensability

I note from the outset that I found the Claimant to be a credible witness. I further note that there are no medical records in evidence to suggest that the Claimant's knees were symptomatic or required treatment of any sort prior to her work-related injury of February 7, 2020. There is no dispute as to the occurrence of the work-related incident on such date, and the medical evidence cited herein clearly demonstrates objective findings beyond "contusions" in the form of bilateral joint effusion and swelling as above noted.

I am also guided by the following recent language from *Planters Cotton Oil Mill, Inc. v. Newman*, 2022 Ark. App. 144 (LEXIS Ark. App. 136):

In this case, the Commission noted that the appellants stipulated that Newman's left knee injury was compensable. The dispute revolves around whether Newman adequately proved that the compensable injury caused an aggravation of his preexisting osteoarthritis. Newman relies on *Arkansas Department of Human Services v. Shields*, 2018 Ark. App. 247, 548 S.W.3d 208, and *Saline Memorial Hospital v. Smith*, 2013 Ark. App. 29, which are both cases involving knee injuries that exacerbated preexisting chronic degenerative changes. The facts in *Smith* are remarkably like those in the present case. Smith suffered from preexisting osteoarthritis before she injured her left knee at work. The hospital accepted the injury as compensable and paid medical benefits and temporary total-disability benefits through December 21, 2010. A dispute arose, however, when Smith's treating physician recommended that she undergo a total knee replacement. The hospital terminated benefits, claiming that Smith's need for a left-knee replacement was the result of her preexisting arthritic condition and not related to her work injury. We affirmed the Commission's decision awarding Smith additional medical benefits, including the total knee replacement... Moreover, as in *Smith*, it is notable that Newman was not experiencing left-knee problems immediately prior to his fall, and his doctors had not recommended a total knee replacement before his work injury. Therefore, we cannot say that reasonable minds could not reach the conclusion, as the Commission did, that Newman's compensable injury aggravated his preexisting osteoarthritis... The Commission awarded medical expenses, temporary total-disability benefits (modified from the ALJ's award), and attorneys' fees. Specifically, the Commission noted that Dr. Gordon, when he first began treating Newman in 2017, assessed his condition as "[l]eft knee pain secondary to medial meniscus tear, lateral meniscus tear, *exacerbation osteoarthritis*." (Emphasis added by the Commission).

The incident described in the present matter obviously occurred within the course and scope of the Claimant's employment in view of its initial acceptance as compensable by the Respondents. In addition, the Claimant's subsequent bilateral knee issues are supported by objective medical findings in excess of "contusions" that indicate obvious internal physical harm

to her body. Although his comments may appear contradictory with respect to those of January 28, 2022, I afford considerable weight to Dr. Gordon's characterization on September 30, 2020, of the Claimant's injury as an "exacerbation" of her pre-existing patellofemoral chondromalacia. I also attribute considerable weight to Dr. Smith's letter of October 15, 2020, with respect to his own interpretation of the Claimant's bilateral knee MRIs which he felt demonstrated "tears in the cartilage of bilateral patellas," and find that such outweighs Dr. Gordon's opinions on this precise point.

Based on the foregoing discussion, I specifically find that the Claimant sustained a compensable aggravation of her pre-existing bilateral knee condition on February 7, 2020, and is entitled to reasonably necessary medical care and related expenses associated therewith as provided by Dr. Joel Smith and providers ancillary to his care.

Temporary Total Disability

As noted above, the Claimant testified that no light duty has been offered to her. There was no opposing witness to contradict such testimony and, as also noted above, Dr. Smith directed that the Claimant remain on light duty for an additional three months as of November 19, 2021. In sum, there is no medical evidence to suggest that the Claimant has reached the end of her healing period and there is no evidence to suggest that she has returned to work since March 17, 2021. Accordingly, I am constrained to find that the Claimant has proven, by a preponderance of the evidence, that she is entitled to temporary total disability benefits from March 17, 2021, through a date yet to be determined, pursuant to the above-cited case law with respect to scheduled injuries.

ORDER

Based on the foregoing discussion, including my observation of the witness and her testimony, review of the hearing transcript, the documentary evidence supplied by the parties, and application of the statutory and case law cited above, I specifically find that the Claimant has proven by a preponderance of the evidence that she sustained a compensable aggravation of her pre-existing bilateral knee condition on February 7, 2020, and is entitled to reasonably necessary medical care and related expenses associated therewith as provided by Dr. Joel Smith and providers ancillary to his care. I further specifically find that that the Claimant is entitled to temporary total disability benefits from March 17, 2021, through a date yet to be determined,

The Respondents are ordered and directed to pay benefits consistent with the findings of fact made herein. 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, the Claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. One-half of this fee shall be payable by the Respondents, and one-half shall be payable by the Claimant from the indemnity benefits awarded herein. The Respondents are ordered and directed to pay the Court Reporter's fee within thirty days of billing for such if they have not already done so.

IT IS SO ORDERED.

TERRY DON LUCY
Administrative Law Judge

.