

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002750

SCOTT NICHOLS, EMPLOYEE	CLAIMANT
HASKINS PRIME LOGISTICS, LLC., EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 13, 2021

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

Claimant represented by the HONORABLE WHITNEY B. JAMES, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the Administrative Law Judge filed April 22, 2021. In said order, the Administrative Law Judge

made the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The Claimant has proven, by a preponderance of the evidence, that his left total knee arthroplasty was related to his compensable injury of April 29, 2020, is entitled to appropriate benefits associated therewith, inclusive of temporary total disability benefits from September 5, 2020, through September 22, 2020, and

temporary partial disability benefits from September 23, 2020, through November 2, 2020.

3. The Claimant has failed to prove, by a preponderance of the evidence, that the Respondents herein should be held liable for late payments sanctions or penalties.
4. The Claimant is entitled to attorney's fees with respect to controverted indemnity benefits.

We have carefully conducted a *de novo* review of the entire record herein and it is our opinion that the Administrative Law Judge's April 22, 2021 decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. §11-9-809 (Repl. 2012).

For prevailing on this appeal before the Full Commission, claimant's attorney is entitled to fees for legal services in accordance with Ark. Code

Ann. § 11-9-715(Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Palmer dissents.

DISSENTING OPINION

I respectfully dissent from the majority's finding that the Claimant has proven by a preponderance of the evidence that he is entitled to additional medical treatment in the form of left-knee arthroplasty and related treatment was reasonable and necessary in connection with his compensable injury.

Claimant has a long history of knee problems. In 2015, he had arthroscopic surgery on both knees. In 2018, Claimant was treated by Dr. Adam Smith (who would eventually perform Claimant's left-knee

arthroplasty at the center of this dispute) for bilateral “idiopathic osteoarthritis.”

On April 29, 2020, Claimant was working as a delivery driver for Respondents when he was bitten by a dog on his left knee. Respondents accepted the claim as compensable, and paid benefits until he was released by his treating physician at maximum medical improvement. At that point, Respondents position has been – and remains on appeal – that Claimant’s knee-replacement surgery was not medically necessary or reasonable in connection with his compensable left-knee sprain.

Following the dog-bite incident, Claimant was initially treated on April 29, 2020 by Dr. Remel Buslig. According to the clinical summary report, Claimant was there to be treated for a dog bite, which did not break the skin, and an injury to knee (“painful after running from dog”). An x-ray taken that day was reviewed by Dr. Bhumini Patel, a radiologist. His findings are as follows:

There is prepatellar soft tissue swelling. There is a suprapatellar joint effusion. No acute fracture or subluxation is evident on provided views.

There is severe tricompartmental joint space loss with marginal osteophytes most pronounced along the medial femorotibial compartment in keeping with osteoarthritis.

Please note a subtle insufficiency fracture of the tibial plateau cannot be excluded with plain films. If continued

clinical concern or if patient is of non-weightbearing status, recommend evaluation with knee MRI.

Dr. Buslig noted swelling and tender to palpation of the left knee. Dr. Buslig assessed Claimant with “Sprain of unspecified site of left knee, initial encounter.” Dr. Buslig also noted that Claimant reported bilateral knee pain with an onset date of November 19, 2015. Dr. Buslig noted Claimant had “pain at the medial aspect of the knee and at the lateral aspect as well.” The x-rays taken that date showed “severe narrowing of the articular space, consistent with tricompartmental knee arthrosis.”

Claimant was treated by Dr. Chen Wang on May 3, 2020. Dr. Wang’s exam revealed “No Swelling.” “Left medial knee tender to palpation, slight ttp over the medial aspect of left knee joint, pain worse with internal rotation of left knee, ROM is intact no laxity noted.” Dr. Wang assessed Claimant with “sprain of unspecified site of left knee, subsequent encounter.”

Dr. Vargas later treated Claimant and noted that the April 29, 2020 x-ray did not show any objective findings of an injury or aggravation, so Dr. Vargas sent Claimant for an MRI. Claimant had an MRI on June 29, 2020. Dr. Vargas reviewed the MRI and determined that the MRI “confirmed the previous diagnosis that the patient has severe osteoarthritis of the knee.” Dr. Vargas wrote the following in his notes about this visit:

There is no evidence of ligament tear or acute injury that could have been recently. There is no marrow signal to suggest edema, fractures, or acute events at the knee. The patient [ha]s still been symptomatic. I explained [to] him that I found no objective findings of injury

As for Claimant's preexisting osteoarthritis, Dr. Vargas explained to Claimant that the "osteoarthritis is no[t] being caused by the dog bite accident."¹ Dr. Vargas found Claimant "reached maximum medical improvement for the aggravation of the pain at the osteoarthritic knee aggravated by the dog bite," and referred Claimant to Dr. Adam Smith to consider knee replacement.

Dr. Smith examined Claimant on July 28, 2020 and noted that Claimant was returning to him for treatment of "idiopathic osteoarthritis," for which Dr. Smith had treated Claimant two years prior. Dr. Smith eventually performed total left-knee arthroplasty – the treatment at the center of the parties' dispute.

Under Section 11-9-508(a) of the Arkansas Code, Claimant is only entitled to reimbursement for medical treatment that is reasonable and necessary in connection with his compensable injury. A claimant cannot carry this burden of proof merely through objective findings of a pre-existing

¹ Dr. Vargas's notes say that Claimant's "osteoarthritis is *now* being caused by the dog bite accident." (Emphasis added). Given the other remarks by Dr. Vargas in this note, it appears this is a typo (there are several, as the note was written using dictation software), and that the note should read Claimant's "osteoarthritis is *not* being caused by the dog bite accident." (Emphasis added).

condition which became more painful after an incident at work. *Liaromatis v. Baxter County*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). Furthermore, a claimant must establish a causal connection between any objective medical findings in the record and the alleged compensable injury, even if the alleged compensable injury is an aggravation of a preexisting condition. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998).

Claimant asserts that he is entitled to additional medical and temporary indemnity benefits related to the knee-replacement surgery. There is simply no medical evidence to connect the knee surgery with the dog bite. In fact, Claimant's treating physician (Dr. Vargas) explained to Claimant that there is no objective medical evidence of an injury – including an aggravation. Accordingly, I must dissent from the majority opinion.

CHRISTOPHER L. PALMER, Commissioner