

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H000250

DARRYL G. PAYNE, EMPLOYEE	CLAIMANT
PHILLIPS COMMUNITY COLLEGE, EMPLOYER	RESPONDENT
PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER/TPA	RESPONDENT

OPINION FILED 14 NOVEMBER 2023

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 17 August 2023 in Helena/West Helena, Phillips County, Arkansas.

The claimant appeared *pro se*.

Mr. Robert H. Montgomery, Attorney-at-Law of Little Rock, Arkansas, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case is before the Commission again related to a compensable injury that the claimant sustained on 7 January 2020. The present matter was heard on 17 August 2023 in Helena/West Helena, Arkansas, after the parties participated in a prehearing telephone conference on 23 May 2023. A Prehearing Order, admitted to the record without objection as "Commission's Exhibit No 1", was entered on that same day. The Order stated that the ISSUE TO BE

LITIGATED was whether the claimant was entitled to additional treatment for his compensable left quadriceps¹ injury. All other ISSUES were reserved.

The Prehearing Order set forth the following STIPULATION:

The previous decision in the matter is binding precedent under the Law of the Case Doctrine.²

The claimant was the sole WITNESS at the hearing.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated by reference into the Prehearing Order and were listed as follows:

The claimant CONTENDS he is entitled to additional medical treatment and associated benefits.

The respondents CONTEND, generally, that the claimant has received all reasonable and necessary medical treatment for his compensable injury and that all appropriately related indemnity benefits have been paid accordingly. The additional specifics of the contentions were read into the record in their entirety.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

1. The AWCC has jurisdiction over this claim.

¹ The Prehearing Order stated a "compensable left lower extremity injury," but as an alleged knee injury and potentially associated treatment was at issue in the hearing, the parties agreed on the record that stipulating to a compensable injury to the left quadriceps was appropriate. *See* TR at 10.

² That decision dated 22 June 2022 and authored by Administrative Law Judge Katie Anderson was entered into this record without objection as Commission's Exhibit № 2.

2. The previous ALJ decision is binding under the Law of the Case Doctrine.
3. The claimant failed to establish by a preponderance of the evidence that he is entitled to any additional medical treatment for his compensable injury. Nor is he entitled to any additional indemnity benefits related thereto.
4. This matter should be dismissed accordingly.

III. HEARING TESTIMONY and EVIDENCE

Mr. Darryl Payne testified on his own behalf as the sole witness at the hearing. He appeared for the hearing with some records or copies of records that were not provided to the Commission or opposing counsel before the hearing and in conformance with ACA § 11-9-705(c)(2)(A). Respondents' counsel appropriately objected to those records being admitted to the record. The nature of the objection was explained to the claimant, and the objection was sustained. [TR at 13-17]

After some additional discussion about evidence and records, the Commission asked the pro se claimant to explain, "what exactly are you asking for today?" [TR at 17] He responded that he wanted the respondents to fix his knee. While the claimant reviewed some of the records admitted into evidence without objection, including "Respondent's Exhibit No 1," which included a report from Dr. Charles Pearce, Mr. Montgomery began asking some questions of the claimant. [TR at 21]

The claimant was injured on 7 January 2020 when he fell down some stairs while carrying computer equipment. [TR at 22] Under the care of Dr. Phillip Smith, he was diagnosed with and treated for a left quadriceps tendon injury. A July 2020 MRI report read that the claimant's meniscus was normal. [TR at 23]

Mr. Payne stated that his care with Dr. Smith ended after he (the claimant) came to believe that he had a knee problem that Dr. Smith was not addressing. [TR at 24] The claimant mentioned seeing Dr. D'Orsay Bryant via a Change of Physician Order and also saw, at some point, Drs. Martin and Busby. He was eventually seen at UAMS by Dr. Charles Pearce, who he testified had the benefit of accessing all of his previous medical reports. [TR at 25] The claimant recalled Dr. Pearce indicating that he reviewed previous reports and that Dr. Pearce did not believe that any additional impairment ratings were appropriate for the left leg. [TR at 26] The doctor further indicated that he did not believe any additional diagnostic or treatment modalities were appropriate. Discussing Dr. Pearce's report further, the claimant recalled Dr. Pearce stating that his main deficit was related to decreased leg strength which was under the claimant's control. The claimant made clear that while he recalled that opinion, he disagreed with it. He also disagreed with Dr. Pearce's opinion that there would be little benefit from some arthroscopic procedure that the claimant had discussed with some other provider. [TR at 27]

The claimant acknowledged that despite Dr. Pearce's opinion against any additional treatment being indicated, the respondents approved an additional four weeks of physical therapy for his left leg. [TR at 27, Respondent's Ex. No 2 at 47] He further agreed that it was settled in previous litigation that he reached MMI on 13 July 2021, but that he is now asking for additional surgery on his knee. [TR at 28]

Mr. Payne went on to state that he believes that he is entitled to additional TTD benefits, but he appeared to relate that back to his previous position that he was

entitled to a twenty percent (20%) impairment rating to the whole body—a rating that Judge Anderson already found he was not entitled to. [TR at 29] He then said that he should receive some additional TTD benefits because he never healed, despite the earlier finding of MMI. [TR at 30]

The claimant testified that he was looking for work and thought that he could perform a sit-down job. [TR at 31] He recalled testifying at his deposition that he has concerns about arthritis and that he would like additional treatment on his left leg to evaluate for potential arthritis. [TR at 33] His recent application for Social Security benefits was denied, but he acknowledged experience or skills in many areas of business operations. Mr. Payne recalled a vocational rehabilitation counselor saying that he needed to “step up” his efforts to find a job and stated that he felt he had followed through on that. [TR at 35] Mr. Payne further recalled the FCE placing him in a medium job classification. He denied continuing leg exercises previously performed at home to improve his strength. [TR at 36]

The parties discussed some evidentiary and procedural aspects of the case and closed the record. [TR at 45]

Dr. Pearce’s report was discussed multiple times by the parties. That note initially indicated that a final opinion would be offered once he was able to review the FCE report. His addendum to that note, dated 30 December 2020 states:

I have received and reviewed the functional capacity evaluations completed by this patient on August 13, 2021 and November 3, 2021. The patient gave valid effort with both tests and for both tests he was placed in the medium category of work as outlined by the department of labor. This allows occasional lifting from 21-50 lbs, frequent lifting 11-20 lbs and constant lifting 1-10 lbs. These are his restrictions. He has

previously been given impairment ratings and no additional impairment is indicated. There is no indication for further diagnostic or treatment modalities for him. His main deficit is related to decreased strength in the leg which is fully under his own control in my opinion. Arthroscopy previously discussed by another physician would be of little benefit for him. These statements are made within a degree of medical certainty. [See Resp. Ex. № 1 at 15-17]

The diagnosis for the visit with Dr. Pearce stated only “weakness of left lower extremity.”

IV. ADJUDICATION

The stipulated facts are outlined above. It is settled that the Commission, with the benefit of being in the presence of the witness and observing his or her demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999).

A. The Claimant Failed to Prove by a Preponderance of the Evidence that he is Entitled to Any Additional Benefits.

The parties previously stipulated to a compensable injury to the claimant’s left lower extremity, specifically his quadriceps, and treatment and related benefits were provided. The question now is whether he is entitled to additional treatment and benefits for an alleged problem with his left knee that he claims is causally related to the compensable injury. Arkansas law requires an employer to promptly provide for medical treatment and surgical services that are reasonably necessary and related to injuries sustained by an employee. ACA § 11-9-508(a). A claimant must prove, by a preponderance of the evidence, that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.2d 153 (2003). Reasonable

and necessary medical services may include those necessary to, among other things, reduce or alleviate symptoms resulting from the compensable injury. *Jordan v. Tyson Foods, Inc.*, 51 Ark. App. 100, 911 S.W.2d 953, 1995 Ark. App. LEXIS 589. A claimant is not required to provide objective medical proof of his need for continued treatment. *Ark. Health Ctr. V. Burnett*, 2018 Ark. App. 427, 558 S.W.3d 408. But the claimant bears the burden of establishing by a preponderance of the evidence that treatment is reasonable and necessary *and* that it bears a causal connection to the work injury. *Cossey v. Pepsi Beverage Co.*, 2015 Ark. App. 265, 460 S.W.3d 814.

The claimant failed to meet his burden on the claim that he is entitled to any treatment or benefits beyond what he already received. The respondents provided a report from Dr. Pearce that found no issue with the restrictions previously placed on the claimant and assessed him only with weakness in his leg, attributing that weakness to the claimant's own control. Dr. Pearce opined that any additional diagnostics or treatment would be of little benefit and specifically opined against some sort of arthroscopic procedure that the claimant discussed with another provider at some point. Mr. Payne provided no documentary evidence in support of his claims and he provided no testimony to persuade me that a present condition requires treatment and is causally related to his compensable injury.

On this record the claimant simply failed to prove by a preponderance of the evidence that he is entitled any additional treatment or associated benefits beyond what the respondents have already provided.

V. ORDER

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Consistent with the Findings of Fact and Conclusions of Law set forth above,
this claim is DENIED AND DISMISSED.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE