BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G707727

LEONARD REED, EMPLOYEE **CLAIMANT**

M. A. MORTENSON CO., INC., EMPLOYER **RESPONDENT**

ARCH INSURANCE COMPANY/GALLAGHER BASSETT SERVICES, INC., CARRIER/TPA **RESPONDENT**

OPINION FILED MARCH 11, 2022

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

Claimant, Mr. Leonard Reed, was represented by Mr. Michael W. Boyd, Attorney at Law, Magnolia, Arkansas, at the hearing.

Respondents were represented by Mr. Joseph H. Purvis, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on December 13, 2021, in Little Rock, Arkansas. A Prehearing Order was previously entered in this case on August 10, 2021.

Stipulations:

During the prehearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. An employee-employer relationship existed on or about October 20, 2017, when Claimant sustained a compensable work-related injury to his right leg and knee.

3. At the time of the injury, Claimant was earning an average weekly wage of $898.00, entitling him to a temporary total disability (TTD)/permanent partial disability (PPD) compensation rate of $599.00/$449.00.

4. On March 27, 2018, Claimant underwent a Functional Capacity Evaluation (FCE).

Issues:

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

1. Additional medical treatment on right lower leg.
2. Additional TTD.
3. Additional PPD.
4. Travel.
5. Attorney's fees.
6. All issues not litigated herein are reserved under the Arkansas Workers' Compensation Act.

Contentions:

Claimant:

The Claimant contends that he was injured in the scope and course of his employment with Respondent. Claimant has been denied additional medical, TTD, PPD, and travel expenses.

At the hearing, Claimant added the following contention. One of the issues identified prior to the hearing was additional PPD, and Claimant agrees that the treating doctor assigned no PPD. Claimant contends that PPD should have been assigned to Claimant by Dr. Wassell, his orthopedic surgeon performing surgery on his right lower leg, referencing Table 64 of the AMA Guides that sets forth a minimum rating that should have been assigned at that time – two percent (2%) to the whole body, five percent (5%) to the lower extremity.

Respondents:

On March 7, 2018, Dr. Wassel, the treating Orthopedist, noted that Claimant had full range of motion in the knee with no obvious defects; that he had achieved all the physical therapy goals that had been set for him and was capable of walking and movement on the knee and was at maximum medical improvement for the incident of October 20, 2017. The doctor further opined that he believed the Claimant could return to regular duty at that time. The Claimant disagreed.

Dr. Wassel directed a DVT test to see if that could be the problem. When that test came back normal, Dr. Wassel directed the Claimant to undergo a functional capacity exam. That test came back on March 27, 2018, with an unreliable effort on the part of the Claimant being consistent with only 34 of 53 exercises.

On April 5, 2018, Dr. Wassel placed the Claimant at MMI and gave him zero (0) impairment rating in accordance with the A.M.A. Guidelines.

The Claimant was originally diagnosed with Chronic Pain Syndrome in late 2013 following a 2013 incident with another employer. The Claimant has continued to complain of chronic pain syndrome since that time. In 2018 and 2019, he was diagnosed by his primary treating physician as suffering from "psychosocial chronic pain syndrome."

Finally, Respondents have accepted and paid all monies due and owing in this case.

Summary of Evidence:

The record consists of the hearing transcript of December 13, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record: Commission's Exhibit #1 included the Prehearing Order entered on August 10, 2021, and the parties' respective responses; Commission's Exhibit #2 was an e-mail communication from Attorney Andy Caldwell to the parties regarding an attorney's lien that had been filed in the matter.

Claimant's Exhibit #1 consisted of fifty pages of medical records; Claimant's Exhibit #2 is a two-page Letter from Dr. David Wassel; Claimant's Exhibit #3 was a one-page letter from Dr. Christopher Morgan; Claimant's Exhibit #4 was a one-page letter from Dr. Ahmad Rafi; Claimant's Exhibit #5 is a two-page Referral Form from Dr. Dennis Yelvington to Pain Treatment Centers of America; Claimant's Exhibit #6 is a one-page letter from Dr. Christopher Morgan; Claimant's Exhibit #7 is a one-page Return to Work Status letter from Dr. James Tucker; Claimant's Exhibit #8 is a one-page letter from Dr. Christopher Morgan; Claimant's Exhibit #9 is a one-page letter from Dr. Dennis Yelvington; Claimant's Exhibit #10 contains seven (7) pages of medical records; and Claimant's Exhibit #11 is a copy of Table 64 of the AMA Guides. Respondents' Exhibits "A" through "P" consisted of eighty-six (86) pages of medical records; Respondents' Exhibit "Q" was a transcript (sixty-six pages) of Claimant's deposition and attached exhibits; Respondents' Exhibit "R" was an eighty-two (82) page deposition transcript of Dr. David Wassell and attached medical exhibits; and Respondents' Exhibit "S" was a transcript of the deposition of Dr. Christopher Morgan (consisting of fifty-six pages) and attached exhibits. In addition, I have also blue-backed to the record Respondents' December 15, 2021, letter in response to Claimant's post-hearing submission of the relevant Table in the AMA Guides as it related to Claimant's request for permanent partial disability/PPD benefits.

Witnesses:

During the hearing, Leonard Reed (Claimant, used interchangeably herein) was the only witness to testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witness and observe his demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. I hereby accept the aforementioned stipulations as fact.

4. Claimant proved by a preponderance of the evidence that the medical treatment of record was reasonably necessary in connection with his compensable lower right leg and knee injury of October 20, 2017. Moreover, Claimant proved by a preponderance of the evidence that future medical treatment by Dr. Tucker and Dr. Frankowski/Nurse Jarvis was reasonably necessary in connection with his compensable lower right leg and knee injury of October 20, 2017.

5. Claimant proved by a preponderance of the evidence that he was entitled to temporary total disability compensation from July 23, 2018, until Claimant is released at maximum medical improvement by Dr. Tucker.

6. As Claimant proved that he remained in his healing period and unable to work, it would be premature to assess an impairment rating at this time. Therefore, the issue of permanent partial disability/PPD is held in abeyance.

7. As Claimant proved by a preponderance of the evidence that the medical treatment of record was reasonably necessary in connection with his compensable lower right leg and knee injury of October 20, 2017, I find Claimant has also proven that he is entitled to related travel expenses for the medical treatment of record.

8. 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.

CASE IN CHIEF

Hearing Testimony:

Claimant was fifty-three (53) years old at the time of the hearing. He testified that he had a twelfth-grade education. Claimant had previously worked loading trucks and then obtained a CDL, which allowed him to then drive the trucks. At Stratton Seed, where Claimant worked for sixteen (16) years, Claimant worked loading trucks and later worked driving trucks for Stratton. He was working for Respondent-Employer in October of 2017, and he had worked there approximately three months when he was injured. Claimant testified that Respondent-Employer was in the solar panel business, and Claimant was responsible for driving a diesel truck with a gooseneck trailer and hauling the panels to the designated work site. Claimant further explained that he would assist the forklift operator removing with the "scraps" off the solar panels; he would assist with paperwork; and he would assist with securing the panels on the truck. Claimant testified that the position required him to be on his feet, to walk, to stand, to climb, and to sit while he was driving the truck.

Claimant testified that on Friday, October 20, 2017, he was loading scrap metal on a truck and planned to drive the truck to the yard area where the scraps were kept. He testified that the operator of the forklift that was loading the truck had jarred truck twice. When the forklift operator jarred the truck the third time, "a piece shot off" and "struck [him] in the leg." Claimant clarified that it was his right leg that had been hit by the scrap metal and that his injury was just below the knee. He testified that after the incident he could not get up, and he felt like his leg was broken. As a result, he was taken to the nurse's station at Respondent-Employer's office and was given over-the-counter medication for pain. He stayed on a gurney the remainder of the day. That evening, Claimant continued to have pain in his right lower leg and knee, and on Saturday, when

he arrived at work, he was placed on the gurney again, and stayed there until around 3:00p.m. with the right leg elevated, ice on his right knee, and over-the-counter medication for pain.

Claimant testified that the pain continued, and he saw the company doctor, Dr. Christopher Morgan, internal medicine specialist, in Stuttgart on Monday. Dr. Morgan ordered an x-ray of the right leg, gave him pain medication, took him off work, and referred him to Dr. David Wassell, an orthopedist. When Dr. Wassell discovered the fracture in Claimant's right tibial plateau (the top of his shinbone) and additional breaks in his knee, Dr. Wassell performed surgery to install a plate and some screws on the tibial plateau. While Claimant was recovering from surgery, he was off work and received workers' compensation benefits during that time period. Dr. Wassell also prescribed physical therapy. Claimant testified that he attended all sessions that were recommended, was compliant with their instructions while he was at physical therapy, and performed the exercises that he was instructed to do at home. Claimant testified that Dr. Wassell prescribed additional physical therapy sessions; however, he did not attend the additional sessions because the additional treatment was denied by Respondents. Claimant testified that he was aware of Dr. Wassell's opinion that he had reached maximum medical improvement and that he could return to work on light duty; however, Claimant testified that he was told that Respondent-Employer did not have light-duty work for him.

Claimant also testified that he attended an FCE and that he attempted to perform the tasks that were requested of him. He performed them all, but he was experiencing pain throughout the examination. In response to the evaluator's statement that he did not put forth reliable effort, Claimant stated that he did the best he could in the shape that he was in. Claimant also stated that

he had significant pain in his right lower leg and knee that evening after the evaluation and had to take additional pain medication to help ease the pain.

After Dr. Wassell released Claimant, Claimant continued to see Dr. Morgan for the right lower leg injury. Claimant stated that he saw Dr. Dennis Yelvington, family medicine, as well and that he and Dr. Morgan were in the same clinic. Claimant continued to seek medical care for the right lower leg and knee because of the pain, tenderness, and swelling he was experiencing. Claimant confirmed that Dr. Morgan authored a letter in July of 2018 explaining that Claimant could not return to work due to the right lower leg injury. Dr. Morgan also sent Claimant for pain management at Pain Treatment Centers of America, but they ultimately discharged him because the treatment was not covered by Respondent-Carrier. In sum, Claimant testified that since Dr. Wassell released him in April of 2018, the workers' compensation insurance carrier had not paid for any medical expenses related to his right lower leg and knee. Claimant also testified that Dr. Morgan referred him to Dr. James Tucker, sports medicine specialist, in Little Rock, who administered a few injections in the right knee, but Dr. Tucker's treatment was not covered by Respondent-Insurance-Carrier. Dr. Tucker also referred him to Nurse Practitioner Elizabeth Jarvis at Southern Regional Anesthesiology Consultants, a pain treatment facility. Claimant stated that he was still seeing Ms. Jarvis at the time of the hearing. Claimant testified that Ms. Jarvis prescribed pain medication (hydrocodone), meloxicam, and gabapentin for the nerve pain. However, this treatment was also not paid by Respondent-Insurance-Carrier. Claimant also continued to see Dr. Morgan and Dr. Yelvington and continued to report the swelling and pain in his right lower leg. Claimant testified that in January of 2021, he had a nerve conduction study on the right lower leg that was not covered by workers' compensation. Claimant's understanding of

the nerve conduction study results was that he had damaged nerves in the right lower leg that were not "fixable and needed further evaluation for the - - for further medication on it." Lastly, Dr. Yelvington authored a letter around that time detailing the issues with Claimant's right lower leg and knee and the ability to work.

Claimant also testified that prior to his employment with Respondent-Employer, he had been treated for degenerative disc disease of the lumbar spine. He testified that his low back was somewhat worse since the lower leg injury, which had caused him some difficulty with his ability to walk. Specifically, Claimant stated that he when he stands or pushes off with the right leg, it feels weak and he feels as though he might fall. He stated that he could no longer jump or run and must take daily activities a little slower than before the lower leg injury. As far as his job duties, Claimant stated that he would have difficulty stepping up into his truck and he would be unable to work the brake and the clutch while driving the vehicle.

Claimant testified that he had consistently complained to Dr. Yelvington, Dr. Morgan, and the other physicians that he had seen the last four years about the pain and the swelling that he was experiencing in his lower right leg and knee, and he was experiencing these symptoms even while he testified at the hearing. Claimant confirmed that he had seen physicians in Stuttgart, Arkansas, where he lived, but he had also traveled to Little Rock for appointments with Dr. Tucker, and at Pain Centers of America and Southern Regional Anesthesiology.

Claimant testified that, as of the day of the hearing, he was unable to return to work driving a truck at full duty for Respondent-Employer. Claimant testified that he believed that he was entitled to temporary total disability since Dr. Morgan's opinion in July of 2018, and that he believed that his medical treatment since July of 2018 should have been covered by the workers'

compensation. Lastly, Claimant believed that he was entitled to any additional medical treatment recommended by Dr. Yelvington, Dr. Morgan, or anyone that they had referred Claimant to for treatment.

On cross-examination, Claimant confirmed that he began having problems with his low back between 2006 and 2009 and that he had experienced chronic low back pain since that time. Claimant further confirmed that he had seen Dr. Yelvington and, on occasion, Dr. Morgan, for his low back issues. Dr. Yelvington prescribed pain medication for the low back pain and referred Claimant to Dr. Sprinkle, who administered injections.

Also on cross-examination, Claimant confirmed that Dr. Wassell had released him at maximum medical improvement with no impairment rating. He also confirmed that the deep vein thrombosis testing yielded normal results. Claimant also agreed that in 2018, Dr. Yelvington diagnosed him with chronic pain associated with significant psychosocial dysfunction.

Medical Exhibits:

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

Medical records showed that Claimant saw Dr. Christopher Morgan, internal medicine specialist, on October 23, 2017, for an evaluation of right leg pain after having been hit in the right leg by a four (4) pound piece of metal while at work on October 20, 2017. Clinic records indicate Claimant had instant pain, but he tried to continue to work. He had an abrasion on the right distal tibia and was unable to bear weight on the right leg. When Claimant arrived at the clinic, he was using crutches to ambulate. Claimant's physical examination showed large joint effusion on the right knee; tenderness around the entire knee; difficult range of motion; and an abrasion at the

distal tibia that appeared infected. An x-ray of Claimant's right leg revealed a "very irregular lateral proximal tibial fracture involving the plateau in the joint." Claimant was prescribed pain medication and antibiotics and referred to an orthopedic surgeon.

On November 1, 2017, Claimant underwent an open reduction and internal fixation for the right closed displaced lateral tibial plateau fracture by orthopedist, Dr. David Wassell. Dr. Wassell had previously taken Claimant off work on October 26, 2017, for four (4) to six (6) weeks.

Post-operative imaging revealed that hardware was in place and properly aligned and a small joint effusion was noted. Lateral patellar tilt was also noted.

At a follow-up visit with Dr. Wassel on December 14, 2017, Dr. Wassel wrote that Claimant had significant quadricep muscle weakness resulting in an antalgic gait and that Claimant had not progressed as much as he should have in weaning off the use of his crutches. As a result, Dr. Wassel recommended another month of aggressive physical therapy with an emphasis on regaining his normal gait and strength. Lastly, Dr. Wassel noted that from a work standpoint, Claimant could work any type of sedentary job, if available.

On March 7, 2018, Claimant returned to Dr. Wassell. X-ray imaging from that day showed no significant soft tissue swelling or radiopaque foreign body; no joint effusion; no acute fracture; and no evidence of hardware loosening or screw fracture. Dr. Wassell opined that Claimant was "basically at MMI" and that based on his physical examination and the AMA Guides, there was no impairment rating. As a result of Claimant's continued complaints, Dr. Wassell recommended an FCE to determine Claimant's ability to perform work. Once the FCE had been completed, Dr. Wassell noted that he thought he would be able to release Claimant from his care at that time.

In the meantime, Claimant underwent a Functional Capacity Evaluation (FCE). On April 5, 2018, Dr. Wassell authored a letter regarding Claimant's FCE, which showed that Claimant put forth unreliable effort. However, the FCE showed that Claimant was capable of at least light work, although Dr. Wassell believed that based on his evaluation of Claimant, Claimant had the ability to perform work at a higher level than demonstrated at the exam. Therefore, Dr. Wassell wrote that Claimant had reached maximum medical improvement (MMI) and could return to work. Based on the AMA Guides, Claimant had no impairment rating. Claimant was discharged from Dr. Wassell's care.

On May 1, 2018, Claimant saw Dr. Dennis Yelvington, family practitioner, for his right leg and knee pain. Dr. Yelvington noted swelling in Claimant lower leg. Claimant was diagnosed with chronic pain associated with significant psychosocial dysfunction, essential hypertension, degenerative disc disease of the lumbar spine, and hypercholesterolemia. Medications associated with his lower right leg and knee pain and his low back included meloxicam and tramadol.

On May 30, 2018, Claimant returned to Dr. Morgan for a follow-up on his right leg with complaints of some swelling in his right lower extremity that was better in the mornings than in the evenings. As a result of the swelling in Claimant's right lower extremity, Dr. Morgan recommended testing for deep vein thrombosis (DVT) via a venous Doppler ultrasound.

Claimant underwent the ultrasound to rule out DVT on May 31, 2018, which showed no blood clotting, but did show swelling due to trauma and surgery.

On July 2, 2018, Claimant saw Dr. Morgan with complaints of swelling and pain on his right lower leg and knee. Dr. Morgan noted that orthopedics had released Claimant. Dr. Morgan also noted that Claimant was under chronic pain management for his back prior to this accident,

but that his current pain management doctor could not help Claimant with the knee. However, Claimant reported that he had a new pain management clinic that could help him. Dr. Morgan diagnosed Claimant with chronic pain of the right knee and degenerative disc disease of the lumbar spine. He was referred to pain management for both conditions.

On July 23, 2018, Dr. Morgan authored a letter stating that as a result of the injuries sustained from Claimant's work injury of October 24, 2017, he was unable to return to work due to restrictions.

On August 14, 2018, and on October 1, 2018, Claimant presented at Pain Treatment Centers of America with Dr. Vadim Petrov/Kristy Thompson, APRN. At the first visit, Dr. Petrov's notes reflect that Claimant had complaints of low back, bilateral leg, and right knee pain. Claimant reported that the back pain started years ago and had progressively worsened; however, the right knee and leg pain was the result of his work-related injury in October of 2017 that required surgical repair. At the second visit, Nurse Thompson's notes reflect that Claimant's pain, noted as being in his knee, lower back, hips, legs, and neck, had not changed significantly since his last visit. Claimant described his pain as aching, numbing, penetrating, spreading, tender, and throbbing and on average approximately a 6/10 on a scale of 1-10. He complained of difficulty carrying out certain activities and numbness. He was assessed with arthralgia of the right knee, arthritis of the right knee, enthesopathy of the knee, other spondylosis (lumbar region), cervicalgia, chronic pain, long-term use of opiates, and long-term drug therapy. That day, oxycodone-acetaminophen was prescribed, and a right initial diagnostic genicular nerve block was recommended as treatment.

On September 12, 2018, Claimant saw Dr. Morgan. Clinic notes indicate that Claimant was requesting a referral to pain management due to his chronic pain. Dr. Morgan noted that Claimant was trying to reopen his workers' compensation claim due to his ongoing symptoms.

On October 1, 2018, Dr. Ahmad Rafi, pain management specialist, wrote that he was withdrawing from further care of Claimant because of the inability to get coverage with the workers' compensation adjuster. Dr. Rafi encouraged Claimant to place himself under the care of another physician since his condition required medical attention.

Claimant returned to Dr. Morgan on November 7, 2018, with complaints of ongoing right lower leg and knee pain. Dr. Morgan noted chronic deformity of the right knee and swelling in the right calf and foot. Dr. Morgan prescribed Lyrica for Claimant's chronic pain of the right lower extremity.

He also saw Dr. Yelvington on January 29, 2019, with continued complaints of pain and swelling in the right knee and leg. Dr. Yelvington's records indicate that a referral was made to pain management.

Dr. Morgan authored a letter on February 25, 2019, explaining Claimant's ongoing pain related issues with his right knee since his work-related incident. Dr. Morgan noted that Claimant had already undergone pain management for chronic back pain prior to the work-related injury to the right knee and that he had been treated by an orthopedist for the right knee. Dr. Morgan opined that Claimant needed chronic pain management for his knee and for his ongoing back issues.

On September 17, 2019, Claimant visited Southern Regional Anesthesiology Consultants, PLLC, for pain and swelling in the left leg, ankle, and knee.[1] Claimant reported that he was no longer able to do seasonal work. Upon physical examination, Nurse Elizabeth Jarvis, APRN, (supervised by Dr. Gary Frankowski) noted that as to the right ankle, Claimant had an inability to do any dorsiflexion, but could do plantar-flexion of the right foot. He had tenderness to the touch and discoloration with darkness in the right foot. He also had swelling in the right knee. Nurse Jarvis wrote that Claimant could possibly have reflex sympathetic dystrophy with pain in the right leg due to the old fracture from the work-related injury. Nurse Jarvis ordered a triple-phase bone scan of the right leg to rule out reflex sympathetic dystrophy, prescribed hydrocodone, and continued the gabapentin prescribed by his family doctor.

One month later, on October 17, 2019, Claimant returned to Nurse Jarvis and Dr. Frankowski for a follow up of the bone scan. Nurse Jarvis and Dr. Frankowski opined that Claimant had a fracture of the right leg or osteomyelitis. Specifically, the bone scan revealed an uptake at the right leg, which was not RSD, but was indicative of possible fracture or osteomyelitis. Claimant was prescribed pain medication and referred to OrthoArkansas.

On November 19, 2019, Dr. James Tucker, sports medicine specialist at OrthoArkansas, issued a Return to Work Status slip for Claimant stating that Claimant had been seen in his office that day and that he needed his workers' compensation case reopened due to his work injury in October of 2017.

[1] Medical record states that it is Claimant's left leg, ankle, and knee; however, the remainder of the medical record refers to Claimant's right knee, which is at issue in this claim. Therefore, I find that the reference to Claimant's left leg, ankle, and knee is a clerical error.

Claimant returned to Nurse Jarvis and Dr. Frankowski on December 20, 2019, for a follow-up on his right leg pain. Claimant's hydrocodone dosage was increased, and clinic records indicated that Claimant was beginning treatment with Dr. Tucker at OrthoArkansas.

On or around January 3, 2020, Dr. Tucker ordered an MRI of Claimant's right knee as a result of Claimant's complaints of pain in his right knee and the edema that was seen upon examination. The MRI of Claimant's right knee showed no signs of a stress fracture. However, Dr. Tucker stated that he believed that a fracture could be causing the edema in the right leg, which was revealed by the MRI. To treat the edema, Dr. Tucker prescribed a medium thigh high compression stocking to be placed on his leg before getting out of bed in the morning. Dr. Tucker also suggested that Claimant attempt to reopen his workers' compensation claim and obtain an impairment rating from the physician that originally performed his surgery.

On or around January 12, 2020, Dr. Tucker recommended that a cord sterile injection be administered to the right knee, which clinic notes indicate that Claimant tolerated well.

Claimant returned to Nurse Jarvis on March 17, 2020, where clinic notes indicate that Claimant may have been overusing his medication as he ran out of his medication sooner than he should have. Upon physical examination, Claimant's right lower leg was swollen; however, he did not indicate any pain when pressure was applied to the swollen area. Nurse Jarvis noted that Claimant was wearing a shoe on the right foot, and that there was an indentation "ring" at the top of his sock line. Claimant's medication was refilled and he was cautioned regarding overuse of his medication.

Nurse Jarvis saw Claimant on May 13, 2020, and noted the swelling and inflammation of Claimant's right lower leg and knee. Nurse Jarvis stated that Claimant needed to see an orthopedic

physician to rule out any rejection of the rod in Claimant's leg. Nurse Jarvis encouraged Claimant to send Dr. Tucker's letter to workers' compensation and hopefully get his workers' compensation case reopened.

Claimant saw Nurse Jarvis at Southern Regional Anesthesiology Consultants on July 13, 2020, where Nurse Jarvis noted the pain in Claimant's right knee. She stated that Claimant's blood work was normal, which ruled out any infection, but that continuing to treat the pain with pain medication and not attempting to find the underlying cause of the pain and redness was not a good option. She encouraged him to attempt to reopen his workers' compensation case. She also noted that Claimant's drug screen was abnormal.

Claimant saw Dr. Yelvington on July 14, 2020, for right lower leg and knee pain. A physical examination showed decreased range of motion in his right and left knee and tenderness in both. Dr. Yelvington prescribed gabapentin and meloxicam.

On October 8, 2020, Claimant saw Nurse Jarvis at Southern Regional Anesthesiology Consultants with complaints of pain in the right leg and knee. Nurse Jarvis noted claimant's predominant limp on the right side, pain in the lumbar spine, and encouraged Claimant to try to return to the physician who performed his surgery on the right lower extremity immediately after the work injury.

On January 4, 2021, Claimant was examined by Dr. Morgan. Dr. Morgan noted some swelling in the right lower extremity with good pulses distally and a well-healed scar. Claimant's musculoskeletal examination was positive for arthralgias.

Claimant had a telehealth appointment with Nurse Jarvis at Southern Regional Pain Consultants on January 7, 2021. Claimant reported that his pain medication was helping, but that his pain was worsening. The swelling and discoloration of his leg were also worsening.

On January 28, 2021, Dr. Morgan authored a letter regarding Claimant's nerve conduction study. Dr. Morgan noted that the study revealed some mild injury to the nerves in the right lower leg, which Dr. Morgan opined was related to the trauma Claimant had experienced. He noted that there was no cure for the nerve injury and that the only option was to continue to treat the condition and try to control the pain.

On February 1, 2021, Claimant returned to Dr. Morgan. Dr. Morgan's clinic notes indicated that Claimant's nerve conduction study/EMG revealed right lower extremity findings consistent with a mild neuropathy of the peroneal and tibial nerve sensory fibers and sensory axon loss in the right lower leg. Dr. Morgan assessed Claimant with chronic pain of the right knee, complex regional pain syndrome, type 1, of the right lower extremity, and essential hypertension.

On February 8, 2021, Claimant saw Dr. Yelvinton for his right lower leg conditions, for which Dr. Yelvington prescribed hydrocodone-acetaminophen and gabapentin. On February 11, Dr. Yelvington opined that Claimant was unable to stand or walk for an extended period of time rendering him unable to work, as a result of Claimant's health conditions (including degenerative disc disease of the lumbar spine, chronic pain associated with significant psychosocial dysfunction, complex regional pain syndrome type 1 of the right lower extremity, chronic pain of the right knee, and osteoarthritis).

On March 10, 2021, Claimant saw Nurse Elizabeth Jarvis at Southern Regional Pain Consultants for a follow-up visit. Claimant reported that he continued to have lower leg and knee pain and that he got some relief from his pain medication (hydrocodone).

On October 11, 2021, Claimant returned to Southern Regional Pain Consultants where he saw Kayla Richardson, APRN, for complaints of continued right lower extremity pain. Nurse Richardson's notes indicated that Claimant's right knee condition was chronic and was expected to last longer than a year. It also fluctuated with weather changes. She also noted swelling to the right lower extremity that day and that Claimant continued to take hydrocodone for his pain. Nurse Richardson prescribed Narcan for any occurrence of drug overdose, and medication refills were also provided that day.

Documentary Exhibits:

Claimant submitted a copy of page 85 of the AMA Guides to the Evaluation of Permanent Impairment, 4th ed., Table 64.

Claimant's Deposition Testimony:

Respondents submitted the transcript of the deposition of the Claimant, which was labeled as Exhibit Q and consisted of sixty-six (66) pages of testimony and nine (9) attachments consisting of medical records.[2]

Dr. David Wassell's Deposition Testimony:

Respondents submitted the transcript of the May 30, 2019, deposition of Dr. David Wassell, which consisted of eighty-one (81) pages of testimony and five (5) attachments consisting of medical records.

[2] Claimant testified at length at the hearing, and his testimony is summarized above.

At the deposition, Dr. Wassell testified that he was an orthopedic surgeon at Baptist Health in Stuttgart, Arkansas. He stated that he first treated Claimant on October 30, 2017, for several fractures to the upper portion of the lower right leg, including the tibial plateau. The injury required surgical repair and hardware was placed in the right lower leg. After a Functional Capacity Evaluation/FCE, Dr. Wassell found that Claimant had reached maximum medical improvement (MMI) and released him with a zero percent (0%) impairment rating to the right lower leg and knee.

When asked about Dr. Morgan's opinion that Claimant had continued to report pain in his lower right leg and Dr. Morgan's observation of swelling in the lower right leg and knee, Dr. Wassell testified that he believed would be reasonable and necessary under those circumstances for Dr. Morgan to continue treating Claimant for the right lower leg and knee.

With regard to the Functional Capacity Evaluation/FCE, Dr. Wassell admitted that he had not read the entire report prior to making his determination that Claimant had reached maximum medical improvement (MMI), had a zero percent (0%) impairment rating, and was capable of at least light work, if not more. He also testified that he was interested in the functional capacity of the lower right leg when he ordered the study, but he did not review the individual testing results of the FCE, and specifically with respect to Claimant's lower right extremity, where the testing was noted as reliable. Dr. Wassell admitted that he went with the overall summary of the FCE, which showed that the overall results were unreliable.

Dr. Wassell further testified that the FCE testing lasted approximately four (4) hours and that he tried to inform the patients of the time frame prior to testing day. He also stated that it would not be uncommon for someone, such as Claimant, who had not worked in five (5) months

to experience a decreased in stamina during a four (4)-hour test of his physical abilities. Dr. Wassell also stated that it would be possible for a patient to experience a significant amount of pain, swelling and symptoms after enduring a four (4)-hour FCE testing.

Lastly, Dr. Wassell testified that when making the determination that Claimant had reached maximum medical improvement (MMI) with zero percent (0%) impairment rating in April of 2018, he did not take into consideration Claimant's abnormal gait (which was noted in the FCE report), the hardware in Claimant's right lower leg, Claimant's complaints of pain, measurements of his right or left quadricep muscles, muscle strength testing, or diagnostic testing for the development of arthritis. Dr. Wassell stated that he did take into consideration range of motion testing and the overall summary of the FCE results.

Although Dr. Wassell testified that with an injury of the plateau, the zero rating could be changed, Dr. Wassell nevertheless maintained the prior rating given to Claimant of zero percent (0%).

Dr. Christopher Morgan's Deposition Testimony:

Lastly, Respondents submitted the transcript of the September 24, 2021, deposition of Dr. Christopher Morgan, which consisted of fifty-three (53) pages of testimony and six (6) attachments consisting of medical records.

Dr. Morgan testified that he was an internal medicine specialist for Baptist Health in Stuttgart, and he had treated Claimant after his October 20, 2017, injury. Dr. Morgan referred Claimant to Dr. Wassell, and after surgery, Claimant returned to Dr. Morgan with continued complaints of pain and swelling in the right lower leg and knee. Dr. Morgan stated that he observed swelling in Claimant's right lower leg and knee during Claimant's appointments. After a nerve

conduction study showed mild neuropathy and sensory axon loss in the right lower leg, he recommended pain management, but was not immediately successful in getting Claimant to a pain management specialist. Dr. Morgan prescribed medication for the pain in the meantime.

Dr. Morgan testified that Claimant had consistently complained of pain and swelling in the right lower leg and knee and that he recommended additional medical treatment, as Claimant's symptoms had not subsided. Dr. Morgan testified that based on the length of time that Claimant had complained of symptoms after his injury and the results of the nerve conduction study, that it would be reasonable and necessary to send him to a pain management specialist for the lower right leg and knee. Dr. Morgan also testified that it was his belief that within a reasonable degree of medical certainty, it was plausible that the nerve damage to Claimant's lower right leg and knee was related to the October 20, 2017, right lower leg and knee injury.

ADJUDICATION

A. Reasonable and Necessary Medical Treatment/Related Travel Expenses:[3]

In this matter, Claimant asserts that he is entitled to additional reasonable and necessary medical treatment of record from his treating physicians, including treatment as recommended by Dr. Yelvington and Dr. Morgan and those to which Claimant was referred by Drs. Yelvington and Morgan, for treatment for his compensable injury to the right lower leg and knee, as well as future medical treatment as recommended by Dr. Yelvington, Dr. Morgan, Nurse Jarvis (supervised by Dr. Frankowski) and Dr. Tucker. Respondents No. 1 contend that they accepted the Claimant's October 20, 2017, lower right leg injury as compensable and paid medical and indemnity benefits

[3] Although the issue of Claimant's travel expenses is listed as a separate issue in the Prehearing Order, that issue is addressed here as it is related to Claimant's request for additional medical treatment.

(TTD) as a result of the October 2017 injury until approximately April of 2018, when Dr. Wassell opined that Claimant had reached maximum medical improvement with a zero percent (0%) impairment rating. However, Respondents have since controverted Claimant's entitlement to 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). 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).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the Claimant proved by a preponderance of the credible evidence that the medical evidence of record and the future medical treatment by Dr. Tucker and Nurse Jarvis (supervised by Dr. Frankowski) is reasonably necessary in connection with his compensable lower right leg and knee injury of October 20, 2017.

Here, it is undisputed that on October 20, 2017, Claimant suffered a compensable right lower leg and knee injury—in the form of a right tibia fracture at the right tibial plateau (the top

of his shinbone) and additional fractures in his knee—for which Claimant underwent surgery by Dr. Wassell to repair the fractures by installing a plate and screws on the tibial plateau. However, the testimony showed, and the medical records corroborated, that Claimant's symptoms of pain and swelling continued. Subsequent conservative treatment (medication, physical therapy, and injections) failed. Medical records show that Claimant's treating physicians observed continued lower right leg and knee swelling. Dr. Morgan recommended further imaging and ultimately referred Claimant to a pain management specialist after a nerve conduction study revealed neuropathy of the peroneal and tibial nerve sensory fibers and sensory axon loss of the right lower leg. Nurse Jarvis (supervised by Dr. Frankowski) at Southern Regional Anesthesiology Consultants also recommended a nerve block and more testing. Based on the results, Claimant was referred to Dr. Tucker, an orthopedist, to rule out an additional/remaining fracture and infection and rejection of the rod/screws in Claimant's right tibia. Dr. Tucker ordered an MRI on Claimant's right lower leg and knee, which ruled out a stress fracture, but clinic records indicated that Dr. Tucker believed that a fracture could be causing the edema revealed by the MRI. Dr. Tucker then administered a steroid injection in the right lower leg and knee. Further, Nurse Jarvis and Dr. Frankowski recommended further testing by Dr. Tucker to rule out rejection of the hardware in Claimant's right lower leg and knee. Medical records from both Dr. Tucker and Nurse Jarvis indicate that the doctors recommended that Claimant reopen his workers' compensation claim. In sum, Dr. Morgan, Nurse Jarvis, and Dr. Tucker all recommended additional medical treatment or testing for Claimant's right leg and knee as a result of his compensable October 20, 2017, injury.

Notably, Dr. Morgan, who has treated Claimant since Claimant first received medical treatment for his compensable injury, opined that as of July 23, 2018, Claimant was unable to return to work due to his compensable injury to his right leg and knee. In light of Dr. Morgan's internal medicine certification, and in light of the other evidence presented, I give Dr. Morgan's opinion great weight.

I also find Claimant's testimony to be credible. Claimant testified that while he had worked for Respondent-Employer for only a couple of months when he suffered the compensable October 20, 2017, injury to his right lower leg and foot, he had previously worked at Stratton Seed for sixteen (16) years both loading and driving trucks, which was very similar to the work he was doing for Respondent-Employer. Claimant's testimony, which was supported by the medical records, demonstrates that since his compensable right low leg and knee injury on October 20, 2017, he had consistently reported to his physicians that he experienced right lower leg and knee pain, which had not improved after surgery followed by conservative treatment. He stated that his pain was severe and had negatively impacted his activities of daily living in that his right leg was weak and would "give out" on him while standing, causing him to fall. Claimant testified that he had to dress slowly and that he had to stand slowly from a seated position to make sure he could feel that his feet were firmly on the ground. Claimant stated that he was unable to use the right leg to make the step up into his work truck and that it would be particularly difficult to get in and out of the type of truck he drove for Respondent-Employer. Claimant credibly testified that because of the nature of his job duties driving a truck with a clutch and a brake, his injuries, and the lack of availability of light work driving a truck, he was not able to return to work.

I acknowledge Dr. Wassell's opinion that Claimant had reached maximum medical improvement (MMI) and was released from his care with zero percent (0%) impairment rating in April of 2018. Just prior to Dr. Wassell's final assessment, Claimant underwent a Functional Capacity Evaluation where he was found to be capable of light work and was found to have given unreliable effort. However, Claimant's testimony was that he was in significant pain during the evaluation and in severe pain afterward, which I find to be credible in light of the supporting medical records. Moreover, in his deposition testimony, Dr. Wassell confirmed that the FCE report showed that Claimant was limping at the time the FCE was conducted and that the knee injury and limp could cause issues with gait and low back pain. Dr. Wassell admitted that the portion of the FCE related to Claimant's lower right extremity was, in fact, reliable, and it was the upper body testing, which was not related to Claimant's injury and the reason for the testing, that showed Claimant gave unreliable effort. However, Dr. Wassell testified that he only considered the summary findings from the FCE in his determination, and he did not read the entire report when he was making the determination that Claimant was able to do potentially more than light work. Therefore, he was unaware at the time he made his determination that Claimant's lower right extremity testing actually showed reliable effort. Dr. Wassell also agreed that Claimant's FCE was a four (4)-hour test and that Claimant's stamina was likely very low given his injury and the fact that he had not been able to return to work in five (5) months. Lastly, in the deposition testimony, Dr. Wassell stated that if Claimant was reporting pain and the physician was observing swelling, as Dr. Morgan had observed, it would be reasonable and necessary for Dr. Morgan to continue to recommend treatment for the right lower leg and knee. Although Dr. Wassell testified that with an injury of the plateau, the zero rating could be changed, Dr. Wassell nevertheless

maintained the prior rating given to Claimant of zero percent (0%). In light of Dr. Wassell's deposition testimony and the evidence presented, I have attached minimal weight to this determination.

I also acknowledge Respondents' contention that Claimant had been diagnosed with Chronic Pain Syndrome in late 2013 following a 2013 incident with another employer and that Claimant complained of chronic pain afterward. However, it is well-settled in workers' compensation law that an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Williams v. L & M Janitorial, Inc., 85 Ark. App.1, 145 S.W. 3d 383 (2004).

In sum, based on the record before me, and in light of the fact that Dr. Morgan opined that Claimant's lower right leg pain and symptoms were related to his work injury and would require him to be off work as of July 23, 2018, and the treatment recommendations by Dr. Morgan, Nurse Jarvis/Dr. Frankowski, and Dr. Tucker, I find that Claimant has established by a preponderance of the evidence that the medical evidence of record is reasonably necessary to treat his compensable injury of October 20, 2017. In connection with the medical treatment of record, Claimant is also entitled to expenses related to travel to and from the medical providers of record. Moreover, I also find that Claimant has established by a preponderance of the evidence that future additional medical treatment, specifically treatment as recommended by Dr. Tucker and Nurse Jarvis (under the supervision of Dr. Frankowski) at Southern Regional Anesthesiology Consultants for treatment of the lower right leg and knee, is reasonably necessary to treat his compensable injury of October 20, 2017.

B. Temporary Total Disability from July 23, 2018, to a Date Yet to be Determined/ Permanent Anatomical Impairment/PPD for Claimant's Lower Leg and Knee:

Claimant asserts that he is entitled to additional temporary total disability compensation from July 23, 2018, (the date that Dr. Morgan authored a letter stating that Claimant was unable to return to work due to restrictions from his October 20, 2017, lower right leg and knee injuries), to a date yet to be determined.

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. Whether an employee's healing period has ended is a factual determination to be made by the Commission. Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995).

In this matter, a preponderance of the evidence shows that Claimant has not been able to return to work as a result of his October 20, 2017, compensable injury to his right lower leg and knee, and that since July 23, 2018, he has remained within his healing period. As a result, Claimant is entitled to temporary total disability/TTD compensation from July 23, 2018, until a date when Claimant is found to be at maximum medical improvement (MMI) by Dr. Tucker.

Moreover, it would be premature to assign a permanent impairment rating at this time. Claimant has not completed treatment for his October 20, 2017, compensable lower right leg and knee injury. Permanent impairment has been defined as any permanent functional or anatomical loss remaining after the employee's healing period has ended. Johnson v. Gen. Dynamics, 46 Ark. App. 188, 878 S.W.2d 411 (1994) (citing Ouachita Marine v. Morrison, 246 Ark. 882, 440 S.W.2d 216 (1969). As a preponderance of the evidence shows that Claimant has not reached the end of his healing period for his October 20, 2017, compensable injury to his right lower leg and knee, the issue of permanent partial disability/impairment has been held in abeyance at this time.

C. Attorney's Fee:

Respondents have controverted Claimant's entitlement to additional temporary total disability benefits from July 23, 2018, to a date yet to be determined and permanent partial disability benefits. Therefore, I find that the 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.

I note that Andy Caldwell, Claimant's former attorney, has filed an attorney's lien. Mr. Boyd and Mr. Caldwell should confer and work together to resolve the exact amount, if any, of the lien as it relates to the indemnity benefits awarded herein.

AWARD

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

All accrued sums shall be paid in lump sum without discount, and this award shall earn interested 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 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 the Claimant.

IT IS SO ORDERED.

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KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE