

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H202952

SONJA RIDDLE, Employee

CLAIMANT

FRIENDSHIP COMMUNITY CARE, INC., Employer

RESPONDENT

ATA WC TRUST/RISK MANAGEMENT RESOURCES, Carrier
RESPONDENT

OPINION FILED JUNE 19, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in
Russellville, Pope County, Arkansas.

Claimant represented by LAURA BETH YORK, Attorney, Little Rock, Arkansas.

Respondents represented by MELISSA WOOD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 18, 2023, the above captioned claim came on for hearing at Russellville, Arkansas. A pre-hearing conference was conducted on February 15, 2023 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to her right knee on April 2, 2021.
3. The claimant was earning an average weekly wage of \$393.95 which would entitle her to compensation at the weekly rates of \$263.00 for total disability benefits and \$197.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left knee on April 2, 2021.
2. Compensability of injury to claimant's left arm on October 28, 2021.
3. Related medical.
4. Temporary total disability benefits.
5. Attorney fee.
6. Notice.

At the time of the hearing claimant clarified that she is requesting temporary total disability benefits from October 13, 2021 through a date yet to be determined.

The claimant contends that on April 2, 2021, she was in the scope and course of her employment when she was unloading a sick child from a van transport when she slipped and fell, fracturing her right leg. The respondents accepted the claim as compensable and paid for her benefits. Claimant felt pain in her left knee at the time of the fall, but during the claimant's authorized physical therapy treatments for her right knee, her left knee and ankle began to really bother her. She complained of left knee pain, but the left knee injury was denied in its entirety. Claimant treated on her own with Dr. Nguyen who diagnosed her with osteoarthritis of the left knee and post patellofemoral realignment. An MRI revealed a left knee tibial plateau subchondral fracture. On October 28, 2021, claimant lost the balance of her crutches and fell. Claimant reinjured her knee and injured her left arm. On October 29, 2021, Dr. Nguyen performed another surgery. Dr. Nguyen causally related her left injury to her workers' compensation claim. Claimant contends she sustained compensable injuries, that she sustained a compensable consequence and that she is entitled to medical benefits, ttd, and an attorney fee. All

other issues are reserved.

The respondents contend that claimant did not suffer a compensable left knee injury or left wrist injury on or about April 2, 2021. Respondents contend that claimant did not suffer a compensable consequence, either. Lastly, respondents contend that claimant did not provide notice of any left knee or left wrist injury until her Form AR-C was filed on April 15, 2022 and in light of that, respondents should not be liable for benefits in the event compensability is found until they received actual notice of a claimed injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on February 15, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that her left knee fracture and her left wrist fractures are compensable consequences of her right knee injury of April 2, 2021.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's left knee and left wrist injuries; this includes surgery performed by Dr. Nguyen.

4. Claimant has proven by a preponderance of the evidence that she is entitled

to temporary total disability benefits from October 13, 2021 and continuing through April 20, 2022.

5. Respondent has controverted claimant's entitlement to all unpaid indemnity benefits.

6. Claimant's request for benefits is not barred by the provisions of A.C.A. §11-9-701 regarding notice.

FACTUAL BACKGROUND

Claimant is a 58-year-old woman who graduated from high school and attended two semesters of college at Arkansas Tech University. She also obtained a clerical degree from Petit Jean Vo-Tech and is a licensed massage therapist.

Claimant has a history of pre-existing problems with her knees. She testified that in 1985 or 1986 she was walking across her living floor when her left kneecap popped out of place resulting in a patella dislocation and surgery. After two years, a second procedure was performed with her patella being moved into place and secured with a screw. She testified that she received a full release and has not had any additional treatment on her left knee in more than 20 years. Claimant also testified that she had a work-related injury to her right knee in 2004 which resulted in surgery by Dr. Brown in Russellville.

Claimant began working for respondent in March 2012 and performed two primary duties. First, she helped in the classroom as a teacher's aide. Her duties included feeding children; changing diapers; keeping refrigerator logs and safety inspections; and playing with the children. She also had a second duty of "van rider", riding in the van when taking the children somewhere.

On April 2, 2021 claimant had been performing the van rider job when the van pulled up to the school. She opened the side door of the van for the children to exit when one of them got sick and vomited on himself. She described her accident as follows:

There wasn't very much space between the front seat and him and I didn't want to lean in, you know, lean across and get junk all over me. So I kind of leaned over and told the bus driver I need some gloves and some wipes to clean him up.

And while she was digging around and getting all of that, I was going to go back and get some more children off the bus and when I did, somehow or another I lost my balance on that step. And I was able to grab the handle that was right by the door and the momentum twisted me around to where I was still on that step and I didn't fall to the ground, but that momentum twisted me and I was holding on, basically, through my shoulders and my knees and leg and my feet. And it was just so that I felt a pop in my right leg and that's when I kind of - - I kind of yelled or hollered.

Following her injury, claimant received medical treatment from Kathryn Pledger, APRN, who diagnosed claimant with acute pain of the right knee. Her treatment included physical therapy and an MRI scan on May 13, 2021, which revealed a comminuted, non-displaced fracture of the right lateral tibial plateau. After the MRI scan, claimant began treating with Dr. Stambough, an orthopedic surgeon, who opined that the fracture would heal on its own. He prescribed the use of crutches, seated work duty, discontinuation of physical therapy, and an injection in the right knee.

In his report of June 17, 2021, Dr. Stambough indicated that the injection had helped tremendously and that claimant could put full weight on her knee. He indicated that claimant could perform 75% of her work activities for two weeks and then she could

return to full duty. Since that time claimant has not had any additional issues or medical treatment for her right knee. Respondent accepted the right knee injury as compensable and paid compensation benefits.

Before the visit with Dr. Stambough on June 17, 2021, claimant had been seen by Shannon Golden, APRN, on May 27, 2021 and indicated that she was having complaints involving her left knee as well:

c/o pain in left knee, having to use crutches due to fracture in right knee.

Claimant also mentioned the left knee problems to Dr. Stambough at the time of her visit on June 17, 2021:

She actually says now her left side on the knee is becoming more bothersome because she had to change how she walked. She said this was aggravated not related to work related injury, but it is the only thing really holding her back now. She would like to be seen for this separately outside of work comp claim.

Claimant denies having informed Dr. Stambough that the left knee was not work related but testified that she did not tell him that it was or was not work related. Respondent did not accept liability for the left knee and claimant sought medical treatment on her own from Dr. Larry Nguyen, orthopedic surgeon. Dr. Nguyen ordered an MRI scan which revealed a left lateral tibial plateau subchondral fracture.

Dr. Nguyen initially treated claimant conservatively with a brace and crutches. He also allowed claimant to continue working for respondent at a sit down job. Claimant testified that she had returned to work for respondent and that on October 12, 2021, she

was sitting on a little shelf instead of sitting on the floor and “when I stood up, it really didn’t buckle, but it felt like somebody had stabbed me in the back of the knee with an icepick.”

It should be noted that claimant did not file a new claim for this incident because she believed it was a continuation of the left knee problems she was already experiencing. Claimant returned to Dr. Nguyen on October 15, 2021, and he noted that claimant’s knee had buckled when she got up at work. At that time he recommended surgery on the left knee which he performed on October 25, 2021.

After her surgery, claimant was on crutches and was in her kitchen on October 28, 2021, when the crutches caused her to fall. As a result of the fall, claimant was diagnosed with a left wrist fracture and underwent surgery for that condition by Dr. Nguyen on October 31, 2021.

Since her left knee and left wrist surgeries, claimant has continued to treat with Dr. Nguyen. This treatment has included the use of a wrist brace and a cane as well as physical therapy. In his final report dated May 20, 2022, Dr. Nguyen noted that claimant was requesting a full release in order to return to work.

Claimant has filed this claim contending that she suffered compensable injuries to both her left knee and left wrist as a result of the right knee injury. She requests payment of medical expenses, temporary total disability benefits, and an attorney fee. It should be noted that in addition to the left knee and left wrist there are complaints noted in the medical records of problems with the left ankle and hip. These were not listed as issues for the hearing. At the hearing, the following discussion occurred:

THE COURT: Okay. You had some discussion there about the left ankle, but I don't have that down as an issue; right?

MS. WOOD: The hip as well, Judge. We are not litigating the hip or the ankle; are we?

MS. YORK: It was predominantly the knee. I think we talked about it being left extremity in the pre-hearing telephone conference, but it was really the knee from the onset and that that caused other problems.

Based on this discussion and the fact that the left ankle and left were not listed as issues, they will not be discussed in the adjudication portion of this opinion.

ADJUDICATION

Claimant contends that in addition to her compensable right knee injury, she also has compensable injuries to her left knee and left wrist. Initially, I do not find that claimant suffered a compensable injury to her left knee on April 2, 2021. Claimant testified that the only place she had pain that day was in her right knee. She also admitted on cross examination that she did not feel a pop in her left knee on April 2, 2021. Claimant completed various forms as a result of the April 2 injury and in none of those forms did she mention any complaints or injury to her left knee. Complaints involving her left knee do not appear in the medical records until her visit with APRN Golden on May 27, 2021, more than a month after the accident.

Accordingly, I do not find that she suffered a compensable injury to her left knee on April 2, 2021. However, I do find that claimant's left knee complaints are compensable as a compensable consequence of her right knee injury.

If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equipment Company v. Sword*, 69 Ark. App. 162, 11 S.W. 3d 1 (2000). The test is whether a causal connection between the two episodes exists. *Sword, supra*; *Jeter v. McGinty Mech.*, 62 Ark. App. 53, 968 S.W. 2d 645 (1998). The existence of a causal connection is a question of fact for the Commission. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780. It is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W. 2d 875 (1992). A finding of causation need not be expressed in terms of a reasonable degree of medical certainty where supplemental evidence supports the causal connection. *Koster, supra*; *Heptinseall v. Asplundh Tree Expert Company*, 84 Ark. App. 215, 137 S.W. 3d 421 (2003).

I find based upon the evidence presented that claimant's left knee complaints and more specifically her left knee fracture are causally related to her right knee injury. In the report from APRN Golden dated May 27, 2021, it is noted:

c/o pain in left knee, having to use crutches due to fracture in right knee. (Emphasis added.)

Likewise, in Dr. Stambough's note dated June 17, 2021, he stated:

She actually says now her left side on the knee is becoming more bothersome because she had to change how she walked. She said this was aggravated not related to a work related injury... (Emphasis added.)

While Dr. Stambough's report went on to indicate that claimant wanted to be seen separately with this condition outside her workers' compensation claim, an assertion

which she denies, the significance of Dr. Stambough's report is that the left knee problems were attributed to claimant's change in the way she walked due to her right knee injury.

This causal connection is further reflected in the initial therapist's note for physical therapy relating to claimant's left knee on July 9, 2021, which states:

Pt presents with L knee pain since May 2021. Pt. reports having her R knee operated on, and when attending pt for this, her L knee began to hurt. (Emphasis added.)

Just six days later on July 15, 2021, claimant was evaluated by Cynthia Day, APRN, whose report of that date indicated that claimant was complaining of left knee pain:

.... not sure what is causing, started at the end of April when she hurt the right knee and started PT.

Patient complaining of pain in left knee began two weeks after starting physical therapy for right knee injury at work; states pain since end of April....

Thereafter, claimant was evaluated by Dr. Nguyen on July 21, 2021. Notably, Dr. Nguyen's report indicates that claimant twisted both her right and left knee on April 2, 2021. As previously noted, this history is not supported by claimant's testimony or the medical records up through that date. Nevertheless, Dr. Nguyen ordered an MRI scan of claimant's left knee and in his report of April 11, 2021 stated that claimant's MRI scan revealed a left lateral tibial plateau subchondral fracture and that:

Her bones are thin, she had a work-related injury where she injured her right knee. She developed stress fractures of the left knee and potentially left ankle. I believe this is a direct result of her work-

related injury. Either from direct trauma from the fall or compensatory gait. (Emphasis added.)

In a letter from Dr. Nguyen to claimant's attorney dated February 13, 2022, Dr. Nguyen addressed the cause of claimant's left knee fracture.

I believe within a reasonable degree of medical certainty, that she did have some pre-existing left knee arthrosis and osteopenia. Her left knee pain was aggravated/exacerbated by the work-related injury 4/2/2021 as demonstrated by the stress fracture/subchondral edema changes noted on her MRI scans. I believe her left knee lateral tibial plateau subchondral fracture and left distal tibial stress fracture are directed related to the work injury 4/2/2021. (Emphasis added)

In response to Dr. Nguyen's opinion respondent had claimant's medical records and her deposition reviewed by Dr. Kirk Reynolds, an orthopedic surgeon. Dr. Reynolds authored a report dated May 30, 2023. In his report of that date with respect to claimant's left knee he stated:

With regards to her left knee pathology. It is my professional medical opinion that, at most, this represents an acute exacerbation of a chronic underlying condition. (Emphasis added.)

Dr. Reynolds then goes on to indicate that he does not believe that the surgery performed by Dr. Nguyen was indicated. Based upon that, it was his opinion that claimant's left knee pathology and the left knee surgery were less than 51% directly or causally related to the twisting injury to her right knee on April 2, 2021. However, claimant does not have to prove that her left knee pathology and the left knee surgery were 100% related to her right knee injury of April 2, 2021. Instead, claimant must simply prove that

there is a causal connection between the two episodes and the existence of a causal connection is a question of fact for the Commission. Here, based upon the evidence presented, I find that claimant has met her burden of proof. The medical records from numerous providers indicate that claimant began complaining of pain in her left knee due to the use of crutches and to an altered gait. This is reflected in the medical reports of APRN Golden, APRN Day, the physical therapist report, the medical record of Dr. Stambough, and finally the medical records of Dr. Nguyen. Furthermore, Dr. Nguyen has specifically opined that claimant's left knee complaints were aggravated or exacerbated by the work related injury of April 2. Finally, even Dr. Reynolds acknowledges that claimant's left knee condition was aggravated by the right knee injury.

Accordingly, based upon the foregoing evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that her left knee fracture is a compensable consequence of her right knee injury.

Obviously, claimant did not injure her left wrist on April 2, 2021, but instead fractured it when she fell in her kitchen while using crutches as a result of the left knee injury. Having found that claimant's left knee fracture and subsequent surgery was a compensable consequence of her original compensable injury, I likewise find that the injury to her left wrist which resulted from the use of crutches following her left knee surgery is also a compensable consequence.

In short, I find that claimant has met her burden of proving by a preponderance of the evidence that her left knee and left wrist fractures were compensable consequences of her right knee injury. Therefore, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with those compensable

consequences.

The next issue for consideration involves claimant's request for temporary total disability benefits beginning October 13, 2021, and continuing through a date yet to be determined. The injury to claimant's left knee and her left wrist are scheduled injuries. An employee who has suffered a scheduled injury is entitled to temporary total disability benefits during their healing period or until they return to work regardless of whether they are totally incapacitated from earning wages. *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). The claimant's "failure to return to work must be causally related to the injury." *Foster v. Tyson Poultry*, 2013 Ark. App. 172, 426 S.W. 3d 536 citing *Fendley v. Pea Ridge School District*, 97 Ark. App. 214, 216-17, 245 S.W. 3d 676, 677-78 (2006).

Here, the claimant did return to work for respondent performing lighter duty work following her visit with Dr. Stambough on June 17, 2021. Claimant continued to work for the respondent until the incident on October 12, 2021, when she was getting up from the stool and felt additional pain in her left knee. Thereafter, claimant sought additional medical treatment from Dr. Nguyen at which time he recommended and performed surgery on claimant's left knee and ultimately on her left wrist as a result of the fall. Claimant did not return to work following the incident on October 12, 2021, and was subsequently terminated in November 2021. Accordingly, I find that claimant remained within her healing period and that she had not returned to work as of October 13, 2021. I find that this status continued until May 20, 2022. On that date, claimant was seen by Dr. Nguyen and he indicated that claimant wanted a full release in order to return to work. Claimant has not been seen by Dr. Nguyen since that date. Dr. Nguyen allowed claimant

to return to work and claimant did in fact begin looking for work and eventually became employed as a substitute teacher.

Accordingly, I find that claimant's failure to return to work subsequent to May 20, 2022 was no longer causally related to an injury. In fact, claimant did return to work for another employer subsequent to that date. Therefore, claimant is entitled to temporary total disability benefits beginning October 13, 2021 through May 20, 2022.

The final issue for consideration involves respondent's contention that claimant did not provide notice of a left knee or left wrist injury until she filed the AR-C on April 15, 2022; therefore, respondent is not liable for any compensation benefits prior to that date pursuant to A.C.A. §11-9-701. I find no merit to this contention. First, A.C.A. §11-9-701(a)(1) requires that the employee report the injury to the employer. Claimant did report the injury to her employer on the day it occurred. While a left knee injury or left ankle injury were not reported that is because they arose as a result of a compensable consequence of the reported right knee injury. As previously discussed, the medical records clearly indicate that claimant's left knee complaints arose from having to use crutches as a result of the right knee fracture and an altered gait. Likewise, the left ankle injury was a compensable consequence of the left knee injury.

Accordingly, I find that the claimant did report her injury which led to the left knee injury and left wrist injury when she reported the injury on the date it occurred. Therefore, A.C.A. §11-9-701 does not operate to bar claimant's claim for benefits.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that

her left knee fracture and left wrist fracture are compensable consequences of her compensable right knee injury of April 2, 2021. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with these compensable consequences. This includes the surgeries which have been performed by Dr. Nguyen. In addition, claimant is entitled to temporary total disability benefits beginning October 13, 2021, and continuing through May 20, 2022.

Pursuant to A.C.A. §11-9-715(a)(1)(B), claimant's attorney is entitled to an attorney fee in the amount of 25% of the compensation for indemnity benefits payable to the claimant. Thus, claimant's attorney is entitled to a 25% attorney fee based upon the indemnity benefits awarded. This fee is to be paid one-half by the carrier and one-half by the claimant. Also pursuant to A.C.A. §11-9-715(a)(1)(B), an attorney fee is not awarded on medical benefits.

Respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$625.00.

All sums herein accrued are payable in a lump sum and without discount.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE