

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H002705

JESSICA SAGE, Employee	CLAIMANT
TRI STATE ENTERPRISES, INC., Employer	RESPONDENT
TRAVELERS INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED JANUARY 19, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by GUY ALTON WADE, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 6, 2021, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 29, 2021 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 employee/employer/carrier relationship existed among the parties on April 16, 2020.
3. The claimant sustained a compensable injury on April 16, 2020.
4. Claimant was earning sufficient wages to entitle her to compensation at the

weekly rates of \$335.00 for total disability benefits and \$251.00 for permanent partial disability benefits.

5. All prior opinions are final.

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

1. Additional medical benefits, including unpaid medical.
2. Additional temporary total disability benefits.
3. Attorney's fee.

At the time of the hearing claimant clarified that she is requesting payment of additional temporary total disability benefits beginning from the date of last payment through a date yet to be determined. With respect to the issue of unpaid medical, respondent agrees that it is liable for payment of all related medical treatment claimant received for her compensable left knee injury through Dr. Bolyard's release of the claimant on December 17, 2020. Respondent has not accepted liability for medical provided to claimant after that date.

The claimant contends she is entitled to additional temporary total disability benefits from the date that the respondents last paid temporary total disability through a date yet to be determined. The claimant contends that she is entitled to additional medical treatment including treatment by or at the direction of Dr. Hamby. The claimant contends that her attorney is entitled to an attorney's fee. The claimant also contends that the medical bills reflected in Exhibit 5 are the liability of the respondents and that they should be directed to pay any of those bills that have not already been paid.

The respondents contend the claimant is not entitled to any additional temporary total disability benefits and in fact was overpaid TTD following the termination of treatment

by Dr. Bolyard. Respondents are requesting reimbursement and/or a credit toward any potential future benefits. Likewise, any treatment of the claimant after Dr. Bolyard is not reasonable, necessary, or related to any work injury and therefore is not the responsibility of the respondents.

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 witness and to observe her 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 September 29, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that Dr. Hamby's referral to an orthopedic specialist for an anterior cruciate tear is reasonable and necessary medical treatment for her compensable left knee injury.

3. Claimant has met her burden of proving by a preponderance of the evidence that Dr. Hamby's treatment for inflammation in her left knee is reasonable and necessary medical treatment for her compensable left knee injury. This treatment includes medication as well as the cortisone injection. It does not include medical treatment provided by Dr. Hamby for potential internal derangement of the left knee – this would include the MRI scan and referral to an orthopedic specialist.

4. Claimant has failed to prove by a preponderance of the evidence that she is

entitled to additional temporary total disability benefits subsequent to December 19, 2020. Respondent is entitled to a credit against any future indemnity benefits for any temporary total disability benefits paid after December 19, 2020.

FACTUAL BACKGROUND

A prior hearing was conducted in this claim on December 7, 2020 and an Opinion was filed on January 6, 2021 finding that claimant had proven by a preponderance of the evidence that she suffered a compensable injury to her left knee while working for respondent on April 16, 2020. Claimant was awarded payment of medical treatment; including surgery by Dr. Bolyard, and temporary total disability benefits from April 18, 2020 through a date yet to be determined. That opinion was appealed by respondent to the Full Commission which in an Opinion filed May 12, 2021 affirmed and adopted the January 6, 2021 Opinion.

As noted, claimant was previously awarded payment of medical expenses which included surgery performed on claimant's left knee by Dr. Bolyard on June 17, 2020. Dr. Bolyard's operative report indicates that his post-op diagnosis included chronic left knee synovitis and minimal medial meniscus edge fraying.

Following her surgery claimant returned to Dr. Bolyard on July 28, 2020. Dr. Bolyard indicated that a biopsy confirmed that she suffered from chronic synovitis and he noted that her pain and swelling had improved. He recommended that claimant continue physical therapy and follow up as needed.

Claimant's next visit with Dr. Bolyard occurred on October 20, 2020. He noted that claimant had increasing discomfort in her left knee since August and further noted that

claimant might need a rheumatology evaluation if she continued to have left knee pain. Significantly, he noted that her findings at surgery revealed no mechanical problems with her knee.

Claimant's final visit with Dr. Bolyard occurred on December 17, 2020. He noted that claimant was taking naproxen for her chronic synovitis and that no mechanical difficulties were discovered during surgery. He also noted that claimant was going to obtain a primary care provider and she might need a rheumatology workup. He released claimant to return as needed and also completed Form AR-3 indicating that claimant could return to work as of December 19, 2021 and that she had no permanent impairment due to her work-related injury. (It should be noted that Dr. Bolyard stated 2021 when the date should have been 2020 as evidenced by the fact that it was a final report and he did not see claimant again after December 17, 2020.)

After her release by Dr. Bolyard, claimant sought medical treatment from Dr. Hamby, a primary care physician. Her initial treatment with Dr. Hamby occurred on April 28, 2021, and she was evaluated for several issues including her left knee. With respect to her left knee, Dr. Hamby refilled medications. On July 2, 2021, Dr. Hamby gave claimant an injection in her left knee.

On August 25, 2021, claimant reported to Dr. Hamby that her left knee was popping out of place and as a result Dr. Hamby ordered an MRI scan for claimant's left knee to determine whether there was any internal derangement. The MRI scan was performed on September 3, 2021, and was interpreted as showing mild thinning of the anterior cruciate ligament which might represent a partial tear. Based upon those findings, Dr. Hamby in a letter dated September 22, 2021 indicated that he was referring claimant to

an orthopedic specialist for an anterior cruciate tear to her left knee.

Claimant has filed this claim contending that she is entitled to additional medical treatment for her compensable left knee injury. She also seeks payment of additional temporary total disability benefits and a controverted attorney fee.

ADJUDICATION

Claimant contends that she is entitled to additional medical treatment for her compensable left knee injury. An employer is to provide for an injured employee medical treatment that is reasonable and necessary in connection with the injury. A.C.A. §11-9-508(a). Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment. *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Company v. Randall*, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

Following claimant's release by Dr. Bolyard she began treating with Dr. Hamby who prescribed medication and gave claimant a cortisone injection. When her condition did not improve, he ordered an MRI scan which was performed on September 3, 2021, and was read as showing mild thinning of the anterior cruciate ligament that "may represent a partial tear." In a letter dated September 22, 2021, Dr. Hamby stated:

This is to confirm that we are referring this patient to an Orthopedic specialist in NWA for an anterior cruciate tear to the left knee.

According to claimant's testimony, she saw an orthopedic specialist, Dr. Stites, on

September 30, 2021. A medical report from that visit was not submitted into evidence.

I do not find that claimant is entitled to additional medical treatment from an orthopedic specialist for an anterior cruciate tear to the left knee. First, I note that the MRI indicates that the finding may indicate a partial tear, and Dr. Hamby indicated that he was referring claimant to an orthopedic specialist for an anterior cruciate tear in the left knee. However, respondent submitted into evidence the operative report of Dr. Bolyard from the arthroscopic procedure he performed on the left knee on June 17, 2020. His operative report clearly states that his observation was “the ACL and PCL were intact.” In subsequent medical reports, Dr. Bolyard indicated that there were no mechanical problems present with claimant’s knee. This was noted in his reports of October 20, 2020; December 17, 2020; and in a handwritten response to questions proposed to him by the carrier dated June 17, 2021.

Thus, at the time of her surgery, Dr. Bolyard observed no mechanical problems with claimant’s left knee and he specifically noted that the ACL was intact. Therefore, if there is an issue with a torn ACL now present, I do not find that claimant has proven that it is causally related to her original compensable injury given Dr. Bolyard’s observation during the arthroscopic procedure that the ACL was intact.

With respect to this issue, I note that claimant has referred to a portion of Dr. Bolyard’s operative report as evidence that he did not repair all issues found during the arthroscopic procedure. The relevant language from his report is as follows:

There was some edge fraying of the medial meniscus that was debrided with the shaver, some edge fraying of the lateral meniscus femorally.

Because Dr. Bolyard did not specifically state that he repaired edge fraying of the lateral meniscus, claimant contends that he did not address all issues with regard to claimant's left knee during the surgery. After my review of the operative report, I am not prepared to find that Dr. Bolyard is so incompetent that he observed fraying of the lateral meniscus that needed to be addressed and failed to do so. Dr. Bolyard specifically stated that the ACL was intact and as previously noted in several medical reports and in a handwritten response stated that claimant had no mechanical knee issues.

For these reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment in the form of a referral to an orthopedic specialist for an anterior cruciate ligament tear.

I do find that claimant has proven that she is entitled to additional medical treatment for inflammation in her left knee from Dr. Hamby. In the operative report of June 17, 2020, Dr. Bolyard indicated that his post-op diagnosis included chronic left knee synovitis. He further noted that abundant synovitis was observed during the procedure which was removed with a shaver during the arthroscopic procedure. According to his July 28, 2020 report, a biopsy confirmed chronic synovitis.

In his report of October 20, 2020, Dr. Bolyard stated that claimant was continuing to complain of discomfort in her left knee and he noted:

There may be a role for evaluation of Rheumatology as or if she continues to have this left knee pain.

Furthermore, in his report of December 17, 2020, Dr. Bolyard stated:

She did well, or at least better, on the naproxen with this chronic synovitis of her left knee proven by arthroscopy and biopsy without mechanical difficulties

discovered at surgery. Her follow-up is as needed. She is going to see about getting a primary care provider. There may be a role for a Rheumatology workup. At present, she is out of her naproxen. It did well, but we are going to try her on some Mobic out of the convenience of once-a-day dosing. Again, her follow-up is as needed.

As a result of his recommendation, claimant sought medical treatment from Dr. Hamby for her continued complaints. As previously noted, he treated claimant with medications and an injection before referring her to an orthopedic specialist for an anterior cruciate ligament tear. While I have found that the referral is not reasonable and necessary medical treatment for her compensable injury, I do find based upon the evidence presented that claimant remains in need of treatment for the synovitis diagnosed by Dr. Bolyard and that treatment is to be provided by Dr. Hamby.

With respect to unpaid medical treatment, respondent has indicated that it has accepted liability for payment of all authorized medical treatment incurred before claimant's release by Dr. Bolyard on December 17, 2020. Respondent has not accepted liability for any medical treatment provided since that time. Having found that claimant has proven that she is entitled to additional medical treatment for her synovitis, I find that respondent is liable for payment of medical treatment associated with that treatment from Dr. Hamby. This includes the prescription medication and the injection. Respondent is not liable for payment of the MRI scan nor any treatment provided by Dr. Stites.

The final issue for consideration involves temporary total disability benefits. Claimant contends that she is entitled to additional temporary total disability benefits beginning the date last paid by respondent. According to a letter from the carrier dated

July 2, 2021, respondent paid claimant temporary total disability benefits through May 28, 2021. In that letter, respondent contends that claimant's entitlement to temporary total disability benefits ended on December 19, 2020, the day she was released by Dr. Bolyard, and this has resulted in an overpayment of \$10,203.75. Respondent has requested reimbursement of that amount.

First, I believe it is important to note that claimant's counsel acknowledged that there is no medical report stating that claimant is disabled from working, but instead requests temporary total disability benefits for whatever period the evidence supports. I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits subsequent to December 19, 2020. On December 17, 2020, Dr. Bolyard completed Form AR-3 indicating that claimant could return to work as of December 19, 2020, and stating that she had no permanent impairment due to her work-related injury. Following the release by Dr. Bolyard, she received medical treatment from Dr. Hamby; however, he did not take claimant off work and as acknowledged by claimant there is no medical report indicating that she is disabled from working.

Accordingly, I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits subsequent to December 19, 2020, the day she was released to return to work with no permanent impairment by Dr. Bolyard. To the extent that respondent continued to pay claimant temporary total disability benefits after December 19, 2020, I find that respondent is entitled to a credit against any future indemnity benefits payable in the claim. Respondent is not entitled to reimbursement from the claimant.

AWARD

Claimant has failed to meet her burden of proving by a preponderance of the evidence that Dr. Hamby's referral to an orthopedic specialist for an anterior cruciate tear is reasonable and necessary medical treatment for her compensable left knee injury. Claimant has proven by a preponderance of the evidence that she is entitled to continued medical treatment from Dr. Hamby for inflammation present in her left knee. Finally, claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits subsequent to December 19, 2020.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$348.05.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE