BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. H004698

RICKY SMITH, EMPLOYEE	**CLAIMANT**
JM BOZEMAN ENTERPRISES, INC., EMPLOYER	**RESPONDENT**
ACCIDENT FUND INSURANCE, INS CARRIER/TPA	**RESPONDENT**

OPINION AND ORDER FILED JUNE 4, 2021

Hearing conducted before the Arkansas Workers' Compensation Commission, Administrative Law Judge (ALJ) Mike Pickens, on February 17, 2021.

The claimant was represented by the Honorable Andy L. Caldwell, The Caldwell Law Firm, P.A., Little Rock, Pulaski County, Arkansas.

The respondents were represented by the Honorable James A. Arnold, II, Ledbetter, Cogbill, Arnold, Harrison, LLC, Ft. Smith, Sebastian, County, Arkansas.

INTRODUCTION

In the Prehearing Order filed November 25, 2020, the parties agreed to the following stipulations, which they affirmed on the record at the hearing:

1. The Arkansas Workers' Compensation Commission (the Commission) has jurisdiction over this claim.

2. The employer/employee/carrier-TPA relationship existed at all relevant times including on or about July 7, 2020, when the claimant sustained an alleged "compensable injury" to his right knee.

3. The claimant's average weekly wage (AWW) entitles him to the maximum 2020 weekly compensation rates for both temporary total disability (TTD), and permanent partial disability (PPD) benefits.

4. The respondents have controverted this claim in its entirety.

5. The parties specifically reserve any and all other issues for future determination and/or hearing.

(Commission Exhibit 1 at 1-2; Hearing Transcript at 3-4). Pursuant to the parties' mutual agreement, the issues litigated at the hearing were:

1. Whether the claimant sustained a "compensable injury" to his left knee within the meaning of the Arkansas' Workers' Compensation Act (the Act) on or about July 7, 2020.

2. If the claimant's alleged right knee injury is deemed compensable, whether and to what extent he is entitled to medical and indemnity benefits.

3. Whether the claimant's attorney is entitled to a controverted fee on these facts.

4. The parties specifically reserve any and all other issues for future litigation and/or determination and/or hearing.

(Comms'n Ex. 1 at 2; Id.).

The claimant contends he sustained an injury within the course and scope of his employment on or about July 7, 2020, when he stepped into a hole, twisting and injuring his right knee. Dr. Brandon Downs (Dr. Downs), the claimant's treating orthopedic surgeon, performed arthroscopic surgery for a right knee menisci repair on or about August 14, 2020. [The claimant has been advised he needs a total right knee replacement. The issue concerning whether the claimant's total right knee replacement surgery was/is necessitated by the July 7, 2020 work incident, or his preexisting degenerative right knee condition was reserved for future determination and/or hearing. As of the date of the hearing, the claimant had not yet undergone the total right knee replacement surgery. (T. 7-9)]. The claimant contends he is entitled to TTD benefits for the approximately 13 weeks he was off work for his alleged right knee injury, and Dr. Downs's arthroscopic surgery, as well as all related, reasonably necessary medical treatment associated therewith. He contends further his group health carrier is entitled to reimbursement in the amount

of all related, reasonably necessary medical treatment related to his right knee arthroscopic meniscectomy; the claimant himself is entitled to any and all out-of-pocket medical expenses he has paid, as well as his mileage, associated with this surgery; and to payment of a controverted attorney's fee on any and all TTD benefits that may be awarded for his right knee menisci tears. The claimant specifically reserves any and all other issues for future litigation and/or determination including, but not limited to, his entitlement, if any, to PPD benefits for his alleged right knee injury; and whether the proposed total right knee placement surgery is related to, and constitutes reasonably necessary treatment for, his alleged right knee injury of July 7, 2018. (Comms'n Ex. 1 at 2-3; T. 7-8).

The respondents contend the claimant cannot meet his burden of proof pursuant to the Act in demonstrating the torn menisci in his right knee, and his other right knee problems meet the Act's definition of "compensable injury". Specifically, the respondents contend the claimant's torn menisci in his right knee were not the result of the alleged July 7, 2020, work incident, but are the result of the documented preexisting degenerative condition of his right knee. The respondents specifically reserve any and all other issues for future litigation and/or determination. (Comms'n Ex. 1 at 3; T. 8).

The record consists of the hearing transcript and any and all exhibits contained therein and attached thereto, as well as the parties' blue-backed post-hearing briefs.

STATEMENT OF THE CASE

The claimant, Mr. Ricky Smith (the claimant) is 63 years old, has a tenth (10^{th}) grade education, and and lives with his wife in Dickson, Tennessee. He has been a truck driver for 40 years. For the last eight (8) years he has worked for JM Bozeman Enterprises, Inc. (Bozeman) as

a team truck driver with his wife (T. 9-10). The claimant and his wife drive a predetermined, designated route between Charlotte, North Carolina and Dallas, Texas, with occasional stops to pick up additional freight in Atlanta, Georgia. (T. 11). In driving their route each week, the claimant and his wife leave on Monday around noon, and return Saturday afternoon. The trip from Charlotte to Dallas takes them around 22 to 24 hours. This is a two (2)-day round trip, and they make it three (3) times per week. (T. 11-12).

On the date of his alleged injury, July 7, 2020, at around 3 A.M. the claimant stopped for fuel at a truck stop in Van, Texas. As he stepped out of his truck and began walking across the parking lot, he stepped in a hole or crack in the concrete, stumbled but did not fall, and twisted his right knee. At the time the claimant's knee was not bothering him, so he did not believe he was injured. However, a few days later on the return trip from Dallas, the claimant was driving the Bozeman truck in heavily jammed stop-and-go traffic in Atlanta when his right knee began bothering him, and he realized it was noticeably swollen. (T.14-15). On Sunday after they had arrived home, both the claimant and his wife noticed his right knee was swollen. (T.14-15). On cross-examination the claimant acknowledged he initially did not think he was hurt; it was 3 A.M., and that is why he did not immediately report the incident. (T. 27). It was three (3) or four (4) days after the incident, when he was caught in the traffic jam in Atlanta that his knee started "bothering" him, and he noticed the swelling. (T. 28-30).

The next day, on Monday morning, July 13, 2020, before they were scheduled to go back on the road, the claimant presented himself for evaluation and treatment to his primary care physician, Dr. Demond White at Dickson Medical Associates. Dr. White was concerned the claimant may have sustained "ligament damage", so he took him off work, ordered an x-ray and

MRI, and scheduled an appointment for him to see an orthopedic specialist. (Claimant's Exhibit 1 at 1-10). The claimant called Ms. Cindy Fletcher, Bozeman's compliance manager, who is now their safety director, told her about the July 7, 2020 incident, and advised her his doctor had taken him off work. Ms. Fletcher told the claimant she was treating the incident as a workers' compensation claim, and she directed him to present himself for evaluation and treatment with Bozeman's company health care provider, Concentra. The claimant followed Ms. Fletcher's instructions and went to see the company physician at Concentra on July 16, 2020, where he was treated conservatively for the next few weeks. (T. 16-19; CX1 at 11-21; 24-44).

The Concentra medical records of July 16, 2020, reveal the claimant provided a history of twisting his knee as he was walking across "the lot" some two (2) weeks prior. These records further reveal the claimant presented for treatment of a "NEW INJURY" to his right knee, and he had visible "joint swelling". The treating physician at Concentra assessed the claimant as follows: "1. Acute traumatic derangement of knee, right", and ordered an MRI of his right knee. (CX1 at 11-13).

Dr. Todd Warren, of Orthopedic Specialists-Dickson examined the claimant on July 27, 2020. Dr. Warren's clinic note for this visit states:

> The patient is a truck driver reports on 7/8/20. [sic] He stepped in a hole at the Love truck stop in Texas. He noted pain about the right knee that worsened on 7/11/20 when he was caught in traffic while driving his truck in Atlanta. He began to note increased swelling with occasional giving way. Sensation about the right knee. He was evaluated with XR and MRI by Dr. White.

(CX1 at 22) (Bracketed material added). Dr. Warren goes on to state he reviewed both the

claimant's X-ray and MRI. The X-ray revealed "mild patellar osteoarthritis, normal alignment, no fracture or other abnormality." (Id.). Dr. Warren reported the MRI findings as follows:

> MRI of the right knee provided reviewed today reveals posterior horn medial meniscal tear, mild patellar osteoarthritis, mild medial compartment osteoarthritis ligaments intact, no evidence of lateral meniscal tear, no fracture or other abnormality.

(Id.). Dr. Warren assessed the claimant's injury as follows: "1. Acute medial meniscus tear of right knee,

initial encounter. 2. Primary osteoarthritis of right knee." (Id.).

On August 14, 2020, Dr. Brandon Downs, an orthopedic surgeon associated with Centennial Surgery Center in Nashville, Tennessee, performed arthroscopic surgery on the claimant's right knee. This procedure revealed the claimant had tears to both the medial and lateral menisci of his right knee, as well as synovitis, a "loose body", and tricompartmental articular cartilage chondromalacia in the right knee. (CX1 at 47, 45-78). Consequently, Dr. Downs's arthroscopy of the claimant's right knee consisted of a "partial medial and lateral meniscectomy"; removal of the loose body "(chondral fragmentation)"; "synovectomy, limited"; and "chondroplasty of patella and trochlea (separate compartment)". (CX1 at 47).

The claimant was released to return to work on August 21, 2020, seven (7) days after Dr. Downs's August 14, 2020, arthroscopic surgery. As of the hearing date the claimant had been working continuously since he was released to return to work after the surgery. Dr. Downs now apparently has recommended the claimant undergo a total right knee replacement surgery. The right total knee replacement surgery had been scheduled to take place before the hearing date; but the surgery was cancelled because the claimant, among other nonwork-related health conditions is

has Type II diabetes, and his Insulin levels were not within the limits required for him to safely undergo the surgery. (T. 23-25; Respondents' Exhibit 1 at 54; 55-64).

Ms. Fletcher, the claimant's former compliance manager and current safety director was present as the respondents' representative at the hearing, so she heard the claimant's testimony under oath. She testified she had no reason to dispute any of it. Ms. Fletcher said the claimant was a good employee. She also verified the claimant reported a workers' compensation injury to her, and she confirmed she instructed him to go to Concentra. Ms. Fletcher testified further she provided a Form AR-N to the claimant, and she said she would not have done so if she did not believe he had sustained a work-related injury. (T. 51). She testified the claimant should have reported the work incident immediately, but acknowledged she had not "written him up" for failing to do so. (T. 49-52).

The claimant admitted that when he was "a kid" he got into a fight when he was in the seventh (7^{th}) grade and cracked his right kneecap. However, he also testified that, before July 7 or 8, 2020, he was not actively treating with any physician for right knee problems, nor had he been involved in any other accident(s) other than the subject work incident wherein he injured his right knee. (T. 19-20). The record contains medical records from April 28, 2014, through May 11, 2020, which reveal the claimant had a history of preexisting arthritis and other significant degenerative problems in both his right and his left knees, as well as a number of other nonwork-related health concerns. There exist no medical records before the subject July 7, 2020, work incident that reveal the claimant had a torn lateral and/or medial meniscus in either is right or left knees before the date of the subject work incident of July 7, 2020. (RX1 at 1-53).

DISCUSSION

The Burden of Proof

When deciding any issue, the ALJ and the Commission shall determine, on the basis of the record as a whole, whether the party having the burden of proof on the issue has established it by a preponderance of the evidence. ***Ark. Code Ann***. § 11-9-704(c)(2) (2020 Lexis Replacement.). The claimant has the burden of proving, by a preponderance of the evidence, that he is entitled to benefits. *Stone v. Patel,* 26 Ark. App. 54, 759 S.W.2d 579 (Ark. App. 1998). In determining whether the claimant has met his burden of proof, the Commission is required to weigh the evidence impartially without giving the benefit of the doubt to either party. ***Ark. Code Ann.*** § 119-704(c)(4) (2020 Repl.); *Gencorp Polymer Products v. Landers,* 36 Ark. App. 190, 820 S.W.2d 475 (Ark. App. 1991); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 633 (Ark. App. 1987).

All claims for workers' compensation benefits must be based on proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corrections v. Glover,* 35 Ark. App. 32, 812 S.W.2d 692 (Ark. App. 1991); *Dena Constr. Co. v. Herndon*, 264 Ark. 791, 595 S.W.2d 155 (1979). It is the Commission's exclusive responsibility to determine the credibility of the witnesses and the weight to give their testimony. *Whaley v. Hardee's,* 51 Ark. App. 116, 912 S.W.2d 14 (Ark. App. 1995). The Commission is not required to believe either a claimant's or any other witness's testimony, but may accept and translate into findings of fact those portions of the testimony it deems believable. *McClain v. Texaco, Inc*., 29 Ark. App. 218, 780 S.W.2d 34 (Ark. App. 1989); *Farmers Coop. v. Biles,* 77 Ark. App. 1, 69 S.W.2d 899 (Ark. App. 2002).

The Commission has the duty to weigh the medical evidence just as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict.

Williams v. Pro Staff Temps., 336 Ark. 510, 988 S.W.2d 1 (1999). It is within the Commission's province to weigh the totality of the medical evidence and to determine what evidence is most credible. *Minnesota Mining & Mfg'ing v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

Compensability

For any specific incident injury to be compensable, the claimant must prove by a preponderance of the evidence that his injury: (1) arose out of and in course of her employment; (2) caused internal or external harm to the body that required medical services; (3) is established by medical evidence supported by objective findings; and (4) was caused by a specific incident identifiable by time and place of occurrence. ***Ark. Code Ann***. § 11-9-102(4); *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, at 5, 344 S.W.3d 684, at 687 (Ark. App. 2009). The claimant bears the burden of proving the compensable injury by a preponderance of the credible evidence. ***Ark. Code Ann.*** § 11-9-102(4)(E)(i); and *Cossey, supra*.

The claimant must prove a causal relationship exists between his employment and the alleged injury. *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 171, 72 S.W.3d 889, 892 (Ark. App. 2002) (citing *McMillan v. U.S. Motors*, 59 Ark. App. 85, 90, at 953 S.W.2d 907, at 909 (Ark. App. 1997). Objective medical evidence is not always essential to establish a causal relationship between the work-related accident and the injury where objective medical evidence establishes the existence and extent of the injury, and a preponderance of other nonmedical evidence establishes a causal relationship between the objective injury and the work-related incident. *Flynn v. Southwest Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670 (Ark. App. 2010).

"Objective findings" are those findings which cannot come under the voluntary control of the patient. ***Ark. Code Ann***. § 11-9-102(16)(A); *Long v. Wal-Mart Stores, Inc*., 98 Ark. App. 70,

at 80 250 S.W.3d 263, at 272 (Ark. App. 2007). Objective findings "specifically exclude pain, straight-leg-raising tests, and range-of-motion tests." *Burks v. RIC, Inc*., 2010 Ark. App. 862, at 3 (Ark. App. 2010).

It is a well settled and long-established principle of workers' compensation law that an employer takes the employee as he finds him; and an employment-related incident that aggravates a preexisting condition(s) is (are) compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (Ark. App. 2003). Stated another way, a preexisting disease or infirmity does not disqualify a claim if the work-related incident aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which the claimant seeks benefits. *Jim Walter Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (Ark. App. 2003). The aggravation of a preexisting, otherwise non-compensable condition by a compensable injury is itself compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (Ark. App. 1999). An aggravation is a *new injury* resulting from an independent incident. *Crudup v. Regal Ware, Inc*., 341 Ark. 804, 20 S.W.3d 900 (Ark. App. 2000) (Emphasis added). Of course, since it is a new injury resulting from an independent cause, any alleged aggravation of a preexisting condition must meet the Act's definition of a "compensable injury" in order for the claimant to prove compensability. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (Ark. App. 1996).

Concerning the proof required to demonstrate the aggravation of a preexisting condition, our appellate courts have consistently held that since an aggravation is a *new injury*, a claimant must prove it by *new objective evidence of a new injury different than the preexisting condition*. *Vaughn v. Midland School Dist.*, 2012 Ark. App. 344 (Ark. App. 2012) (citing *Barber v. Pork Grp., Inc*., 2012 Ark. App. 138 (Ark. App. 2012); *Grothaus v. Vista Health, LLC*, 2011 Ark. App.

130, 382 S.W.3d 1 (Ark. App. 2011); *Mooney v. AT & T*, 2010 Ark. App. 600, 378 S.W.3d 162 (Ark. App. 2010). Where the only objective findings present are consistent with prior objective findings *or consistent with a long-term degenerative condition rather than an acute injury, this does not satisfy the objective findings requirement for the compensable aggravation of a preexisting condition injury. Vaughn,* 2012 Ark. App. 344, at 6 (holding that Arkansas courts have interpreted the Act to require "new objective medical findings to establish a new injury when the claimant seeks benefits for the aggravation of a preexisting condition"); *Barber, supra* (affirming the Commission's denial of an aggravation of a preexisting condition claim *where the MRI findings revealed a degenerative condition, with no evidence of, and which could not be explained by, an acute injury*) (Emphases added.).

The only issues to be decided at this time are whether the claimant sustained a "compensable injury" to his right knee within the Act's meaning on July 7, 2020; whether and to what extent he is entitled to payment of his medical expenses, and TTD benefits; and whether his attorney is entitled to a fee on these facts. The issues concerning whether the proposed total knee replacement surgery is related to, necessitated by, and constitutes reasonably necessary medical treatment for the claimant's alleged July 7, 2020, injury; or rather was inevitable and is the result of his admitted, long-standing, and well documented history of arthritis in both his right and left knees; as well as whether the claimant has sustained any permanent anatomical impairment as a result of the obviously and thankfully minor work-related incident in question; or whether and to what extent any permanent anatomical impairment the claimant may have is a result of the alleged work injury, or instead is related to his preexisting arthritis and related degenerative conditions, are reserved for future determination and/or litigation.

Indeed, the burden of proof the legislature intended and the Act mandates to prove whether the respondents should be required to pay for the proposed total right knee replacement surgery and that required to prove a "compensable injury" within the Act's meaning are substantially different. The same is true for the level of proof required to prove the extent of the claimant's permanent anatomical impairment, if any, related to the alleged work injury as opposed to his admitted, long-standing arthritis and related degenerative conditions. Indeed, in this case, in light of the claimant's admitted, long-standing, well documented osteoarthritis and other related degenerative conditions in both his right and left knees, it is not – or at least it should not be – a foregone conclusion the Act requires the respondents to pay for the total right kneed replacement surgery, and/or any permanent anatomical impairment. In any event, these issues are not yet ripe for litigation and this opinion and order will not address them.

That being said, based on the applicable law and the facts of this case I find the claimant has met his burden of proof in demonstrating the acute, traumatic tears of both the medial and lateral menisci in his right knee more likely than not occurred as a result of his stepping in a hole or crack in the concrete in the parking lot of the Love's truck stop in Van, Texas on July 7, 2020, for the following reasons.

First, I found the claimant to be – as apparently did the respondents – an honest, amiable, straight-forward person and, therefore, a credible witness. I believe it is fair to say the claimant is a person who has no guile within him, and is willing to tell the truth whether or not it is in his apparent best interests to do so. This fact in and of itself demonstrated the claimant's credibility. The claimant readily admitted he did not initially believe he had injured his right knee in the subject July 7, 2021 incident; that the knee did not start "bothering" him until a few days after the incident;

and he did not notice it was hurting or swollen until he was caught in the traffic jam in Atlanta a few days later. I also believe, as the claimant testified at the hearing, he works whether he is hurting or not. Consequently, in light of the claimant's credibility and the fact I believe he is the kind of person who has the determination and wherewithal to work through some level pain, I do not find it of great consequence he admitted he did not realize he had hurt his right knee until a few days after the subject incident occurred.

Second, I believe the subject July 7, 2020, incident occurred just as the claimant testified, and that the ultimate objective medical findings of acute tears to both the lateral and medial menisci of his right knee are consistent with the work incident the claimant described in his testimony. It appears from the testimony of the respondents' own representative, former compliance director and current safety director, Ms. Cynthia Fletcher, that she, too, believed the claimant's testimony that he sustained a work-related injury to his right knee on July 7, 2020. Ms. Fletcher was a credible witness, as well. Her obviously positive opinion concerning the claimant's credibility, as well as her obvious respect for his work ethic, and her compassion for him as a valued Bozeman employee were evident in both her sworn testimony and her demeanor toward him at the hearing. Indeed, Ms. Fletcher did not take issue with any of the claimant's testimony concerning the alleged work incident or injury.

Third, I find it inconsequential – or at least not material to a decision on the ultimate issue herein – the claimant injured his right kneecap in a fight in 7th grade. Whatever injury the claimant sustained to his right knee at that time was not deemed significant, or even visible, on the April 28, 2014, X-ray of the claimant's right knee.

Fourth, what is most consequential and material in this claim is the medical evidence. While the claimant has an admitted, long-standing, well documented and readily apparent history of arthritis and other degenerative-related conditions in both his right and his left knees, prior to the date of the alleged July 7, 2020, work incident there exists no medical evidence demonstrating he had either or both a torn lateral and/or medial meniscus(i) in his right knee. In fact, according to X-rays of the claimant's right and left knees taken on April 28, 2014, some seven (7) years ago, even though he apparently was experiencing some pain in both his knees at that time, he had, "No overt signs of arthritis" in his left knee, and no apparent abnormalities in his left knee. (RX1 at 5, 1-5). While these records reveal a number of nonwork-related health concerns including Type II Diabetes, high cholesterol, high blood pressure, and progressive age-related and other degenerative changes in both his knees, the record is devoid of any diagnostic tests of the claimant's right knee after this date that reveal he had torn menisci in his right knee before the subject July 7, 2020, work incident. (RX1 at 1-53).

However, the medical records after the subject July 7, 2021, work incident show the claimant had torn lateral and medial menisci in his right knee. Moreover, the post-July 7, 2020, work injury medical records repeatedly refer to the torn medial and lateral menisci in the claimant's right knee has being both "acute" and "traumatic" – i.e., the result of trauma, or injury – in origin. And, based on the preponderance of the evidence in this case, the only acute, traumatic incident in which the claimant was involved was the subject July 7, 2020, work incident. The claimant's admitted, documented preexisting arthritic condition in his right knee more likely than not rendered him more susceptible to injury from even a relatively minor incident such as the one the claimant described herein.

Therefore, for all these reasons, I am persuaded the claimant has met his burden of proof in demonstrating a compensable injury to his right knee – specifically, torn lateral and medial menisci. This meets the applicable laws' standards for the classic aggravation of a preexisting condition. The torn menisci were not present *before* the subject July 7, 2020, incident, but they were present *after* it. Moreover, the claimant's testimony concerning a twisting-type injury is consistent with the type of injury that would cause torn menisci. While the claimant had experienced pain in both his right and his left knees before the subject incident, there exists no objective medical evidence in the record proving he had torn menisci in his right knee before the subject incident. *Vaughn, supra.* To find otherwise on these facts and this record would require a trier-of-fact to ignore the medical and other credible evidence of the most likely cause of the torn menisci, and to engage in speculation and conjecture as to the cause of the claimant's objective, acute, traumatic injury, which the applicable law, of course, does not allow. *Dena, supra.*

Therefore, for all the aforementioned reasons, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this claim.

2. The stipulations contained in the Prehearing Order filed November 25, 2020, hereby are accepted as facts.

2. The claimant has met his burden of proof in demonstrating his torn medial and lateral menisci were the result of the July 7, 2020, work incident, for which Dr. Downs performed arthroscopic surgery on August 14, 2020. This July 7, 2020, injury constitutes the compensable aggravation of the preexisting arthritic and other degenerative conditions of the claimant's right knee within the Act's meaning. Although the claimant denied having experienced pain immediately after the July 7, 2020, incident wherein he stepped in a hole at a truck stop parking lot and twisted his right knee, later in the work-related trip his right knee began causing him pain and discomfort, and was noticeably swollen. The MRI Dr, White ordered to be conducted before the claimant's August 14, 2020, arthroscopy, and thereafter Dr.

Downs's arthroscopic surgery itself revealed "acute, traumatic tears" in both the medial and lateral menisci of the claimant's right knee. The preponderance of the medical and other credible evidence of record demonstrates the torn medial and lateral menisci injury to the claimant's right knee was acute, traumatic, and is separate and distinct from the long-standing, documented, preexisting arthritic and degenerative conditions of both his right and left knees.

3. While the medical evidence reveals the claimant undoubtedly had preexisting arthritic and degenerative problems both in his right and left knees which had caused him pain, and for which he had taken anti-arthritic medication in the past, there exists no evidence he experienced any significant or debilitating problems with his right knee that prevented him from working. In an office note of Dr. White, the claimant's primary care physician, dated April 28, 2014, the claimant reported bilateral knee pain, but an X-ray of his right knee of the same date was "negative", and showed no evidence of any torn menisci in either knee. In addition, the preexisting arthritic and degenerative condition of both his right and left knees had never prevented the claimant from passing his annual DOT physical examinations.

4. The claimant has met his burden of proof in demonstrating he is entitled to payment of his reasonably necessary medical expenses including, but not limited to, the costs of Dr. Down's arthroscopic surgery, the claimant's mileage, and any all other reasonably necessary medical expenses related to the July 7, 2020, compensable right knee torn menisci injury.

6. The claimant has met his burden of proof in demonstrating he is entitled to TTD benefits from the date Dr. White took him off work on July 13, 2020, through August 21, 2020, when he was released to return to work, and he resumed his truck driving job with Bozeman.

7. The claimant's attorney is entitled to a fee on any and all controverted indemnity benefits.

8. All other issues including, but not limited to, whether the proposed total right knee replacement surgery is related to, necessitated by, and constitutes reasonably necessary medical treatment for the claimant's July 7, 2020, right knee injury; or rather was inevitable and a result of his admitted, preexisting, long-standing, and well documented history of arthritis and degenerative conditions in both his right and left knees; as well as the extent of the claimant's permanent anatomical impairment related to the patently and thankfully minor July 7, 2020, incident, if any, hereby are specifically reserved for future litigation and/or determination.

AWARD

The respondents are hereby directed to pay benefits in accordance with the "Findings of Fact and Conclusions of Law" set forth above. All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to ***Ark. Code Ann.*** Section 11-9-809 (2020 Repl.), and *Couch v. First State Bank of Newport,* 49 Ark. App. 102, 898 S.W.2d 57 (Ark. App. 1995); *Burlington Indus., et al v. Pickett,* 64 Ark. App. 67, 983 S.W.2d 126 (Ark. App. 1998); and *Hartford Fire Ins. Co. v. Sauer,* 358 Ark. 89, 186 S.W.3d 229 (2004).

If they have not already done so the respondents shall pay the court reporter's invoice within ten (10) days of their receipt of this opinion and order.

IT IS SO ORDERED.

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Mike Pickens
Administrative Law Judge

MP/mp