

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H305255**

SETH A. STANLEY, EMPLOYEE	CLAIMANT
NOVO BUILDING PRODUCTS LLC, EMPLOYER	RESPONDENT
CHARTER OAK FIRE INS. CO., CARRIER/TPA	RESPONDENT

OPINION FILED **FEBRUARY 6, 2025**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF in Russellville, Pope County, Arkansas.

Claimant represented by GARY DAVIS, Attorney, Little Rock, Arkansas.

Respondents represented by MICHAEL E. RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 17, 2024, the above captioned claim came on for a hearing at Russellville, Arkansas. A pre-hearing conference was conducted on August 22, 2024, 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 this claim.
2. The employee/employer/carrier relationship existed on August 8, 2023.
3. Claimant sustained a compensable injury regarding his left knee.
4. The compensation rates are \$488.00 for temporary total disability and \$366.00 for permanent partial disability.

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However, at the hearing, claimant disputed the stipulation as to his temporary total disability (TTD) rate, and the parties arrived at a new stipulation of \$564.00 for TTD and \$423.00 for permanent partial disability (PPD).¹

By agreement of the parties, the issues to be litigated and resolved at the forthcoming hearing were limited to the following:

1. Whether claimant is entitled to temporary total disability benefits.
2. Whether claimant is entitled to medical benefits.
3. Attorney's fees.

All other issues are reserved by the parties.

In their post-hearing briefs, the parties agreed that the issues being litigated was whether claimant was entitled to TTD from February 19, 2024, through September 5, 2024. The parties had reached an agreement regarding claimant's need for additional medical treatment following the entry of the prehearing order, and therefore, claimant removed his claim for additional medical benefits from this hearing, that issue being now reserved.

The claimant contends that "He sustained admitted compensable injuries. His authorized treating physician, Dr. Kirk Reynolds, has indicated that the claimant has not reached maximum medical recovery. His temporary disability was inappropriately discontinued. Claimant contends entitlement to payment of temporary total disability benefits, beginning with the last payment of said benefits and continuing through a date yet to be determined. This matter has been controverted for purposes of attorney's fees. Claimant's attorney respectfully requests that any attorney's fees owed by claimant on controverted benefits paid by award or otherwise be deducted from claimant's benefits

¹ Permanent partial disability payments are not being sought in this hearing. However, respondent made some payments it termed as PPD which are to be credited against its indemnity obligations to claimant.

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and paid directly to claimant's attorney by separate check, and that any Commission's Order direct the respondent to make payment of attorney's fees in this manner."

The respondents contend that "This claim was accepted and paid. The claimant injured his left knee at work. He was treated and released with a 7% permanent partial disability rating which has been paid. He has had an FCE showing that he is capable of medium levels of work. His maximum medical improvement date was February 27, 2024. He is not entitled to additional benefits."

From a review of the entire record including 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 August 22, 2024, and contained in a pre-hearing order filed that same date are hereby accepted as fact, as are the additional stipulations announced at the hearing as set forth above.

2. Claimant met his burden of proof that he is entitled to temporary total disability benefits at a rate of \$564.00 per week from August 8, 2023, to a date to be determined, with respondents being entitled to credit against that total for any indemnity payments made to claimant.

FACTUAL BACKGROUND

At the conclusion of the hearing, I requested briefs from both parties, setting forth what they believed the evidence proved in support of their contentions. I very much appreciated both submissions, which are blue backed as exhibits to this hearing.

HEARING TESTIMONY

Claimant was the only witness that testified at the hearing. On August 8, 2023, he sustained a knee injury while acting as a territory service representative for respondent Novo. That job required him to physically place between 8000 to 14,000 pounds of material in various Lowe's locations. On the date of his injury, it had been raining; while carrying seven to eight boards on his left shoulder, claimant slipped in the water and twisted his knee. He was seen by the Conservative Care Occupational Health Clinic the next day, eventually being referred to Dr. William Brown, who performed surgery on claimant's left knee on September 20, 2023. Claimant said he continued to have problems with the knee and had a second surgery on September 5, 2024, this time under the care of Dr. Kirk Reynolds.

Following his first surgery, claimant was sent for a functional capacity assessment that was conducted on February 19, 2024. Following that evaluation, he began receiving permanent partial disability payments through May 20, 2024. Claimant contended that his temporary disability should never have been discontinued because he continued to have problems after the first surgery.

Claimant had a recommendation for the second surgery to be performed by Dr. Reynolds but there was a delay in getting the approval from respondent Travelers for the surgery. Once that was obtained, there was then a delay for the plate that was implanted into his knee to be manufactured and delivered.

Claimant said he was in an unloader brace post-surgery from September 28, 2023, until Dr. Reynolds performed the second surgery on September 5, 2024. He had chronic pain in the knee after the first surgery and was limited as to what he could do when trying to carry, bend, or bear weight on that leg.

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Claimant testified that he was not able to work between February 19, 2024, and September 5, 2024, at his job as there was no work offered to him during that period of time within his restrictions.

On cross-examination, claimant explained that his current employment status was until he could operate at full capacity, there was nothing for him to do with the company. The restrictions he received in February 2024 said he could do medium levels of work but could not push a fifteen hundred pound cart; there were no attempts made to accommodate claimant within those restrictions. Claimant stated that to perform his job, he would ask the forklift driver at Lowe's to bring the pallet of product which had previously been delivered to the store to a cart that claimant would then push into the aisles and offload the product from the cart onto the shelf or display.

Claimant testified that when he saw Dr. Reynolds on May 15, 2024, the same physical restrictions were continued, which included the weight restrictions on the cart claimant utilized in performing his job duties. Claimant testified that he had not been released with those same restrictions after his September 2024 surgery because he was still undergoing care and there had not been "an end date discussed" as to when claimant would be released from care. Claimant said he had not looked for any other jobs because he was still employed by respondent Novo while his worker's compensation claim was ongoing, and he believed that would be unethical. Were he permanently prohibited from operating a 1500-pound cart, claimant believed he would no longer be able to work for Novo and would then be forced to take other action.

Claimant testified about what he believed was incorrect regarding how the indemnity benefits he received between February 19, 2024, and September 5, 2024, were either underpayments or mischaracterized payments. His contentions will be explained more fully in the adjudication section of this Opinion. I found claimant to be a credible witness and that his testimony was consistent with the documentary evidence.

REVIEW OF THE EXHIBITS

The exhibits in the case were prepared, at least in part, for issues that were not presented at trial. As such, an exhaustive review of the entire set of documents is unnecessary to decide the issues that were litigated.

Dr. Brown performed a left knee arthroscopy on September 20, 2023. The surgical note records the procedure was “arthroscopic microfracture medial femoral condyle left knee ½ cm defect.” Of particular interest was this section of the procedure detail:

“The medial meniscus was probed and at one point I thought there was a potential posterior horn attachment tear, but I think this was just loose bodies floating in the posterior compartment. On probing and pulling on the medial meniscus, I cannot reproduce a tear.”

Following the surgery, claimant participated in a course of physical therapy and continued to see Dr. Brown for regular follow-ups. On January 4, 2024, Dr. Brown recommended claimant return to work for half-days for 4 weeks with the goal of releasing him to full activity without restrictions. This recommendation was not possible; on February 1, 2024, Dr. Brown recorded “I recommend at this point we get an FCE because I do not know how else to manage his work requirements and option.” The FCE was performed on February 19, 2024, during which claimant put forth a reliable effort. After reviewing the FCE, Dr. Brown found claimant had reached maximum medical improvement and assessed a permanent impairment rating of 7% to claimant’s lower extremity. Claimant was “released to return to work with light duty restrictions in the medium labor criteria.” That category did not allow claimant to push 1500 pounds, which was a requirement for claimant’s position with Novo.

Claimant requested a change of physicians after he was discharged from Dr. Brown’s care

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and first saw Dr. Reynolds on May 15, 2024. His assessments and recommendations were:

ASSESSMENT

Left knee pain and loss of function secondary to traumatic chondral defect of the medial femoral condyle. Unfortunately, this has failed to respond to arthroscopic microfracture. He has acquired varus alignment of the knee with medial compartment overload. Fortunately, no evidence of meniscal injury.

RECOMMENDATIONS

I had a lengthy discussion today with Seth. Given his varus alignment and medial compartment overload he is likely to continue having disability in the knee secondary to pain and loss of function. Fortunately, he is responding favorably to the medial unloader brace. I encouraged him to continue wearing the medial unloader brace. From a surgical perspective I would recommend a valgus producing high tibial osteotomy. In the same setting I would perform an arthroscopic evaluation of the articular cartilage of his medial femoral condyle. In the setting of a defect less than 12 mm, I would perform an autograft OATS to reconstruct his chondral defect. In the setting of a defect greater than 12 mm, I would perform a chondral biopsy with anticipation of a staged matrix autologous chondrocyte implantation if necessary.

Risks and benefits of surgery were discussed at length. Postoperative recovery and rehabilitation were outlined. Seth would like to proceed with surgery. I will order a CT scan of the left lower extremity using the BodyCAD Fine osteotomy protocol. Once we have this available for review then we will begin preoperative planning and schedule him for surgery at a mutually convenient time. In the interim he remains on modified duty at work with recurrent restrictions in place. He has not reached MMI.

This surgery was eventually approved by respondents² and the operation took place on September 5, 2024. That operative report was much more detailed than the one prepared by Dr. Brown after the September 20, 2023, procedure. The procedures performed were:

1. Opening wedge to the left medial proximal tibial osteotomy.
2. Left knee diagnostic arthroscopy with chondroplasty the medial femoral condyle, removal of multiple chondral loose bodies and full-thickness chondral biopsy for possible staged MACI.

² Before approving the surgery recommended by Dr. Reynolds, respondent Travelers submitted this matter for a peer review, which denied the necessity of the second procedure. To its credit, Travelers authorized the treatment despite that denial. As the peer review went only to the reasonableness of the second surgery, that peer review will not be examined further in this opinion.

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3. Intraoperative interpretation of x-ray by surgeon; AP and lateral views of the left knee.

The diagnostic arthroscopy revealed:

1. The articular cartilage of the patellofemoral part was normal.
2. The medial compartment showed a 15mm X 20mm full-thickness chondral defect along the weight-bearing portion of the medial femoral condyle with fibrocartilage and a small central area secondary to previous microfracture which had failed.
3. There was medial meniscus deficiency.
4. The ACL and PCL were normal.
5. The lateral compartment was normal.
6. There were multiple chondral loose bodies within the medial gutter, lateral gutter and suprapatellar pouch.

ADJUDICATION

Because the parties agreed to the compensation rate and since respondents authorized medical care after the entry of the prehearing order in this matter, claimant's brief states "the sole issue then is the period of 09/05/24 back to 02/19/24 with respect to the payment of temporary disability benefits." In its brief, respondent agreed that the disability payments should be recalculated at the appropriate TTD and PPD rates, but denied claimant was entitled to TTD between February 19, 2024, and September 5, 2024, because he had been released to return to work with a permanent impairment rating on February 19, 2024. While I understand respondent's position for a portion of the time in question, I find claimant has proven he was entitled to TTD from February 19, 2024, until September 5, 2024.

A claimant who suffers a scheduled injury is entitled to temporary total disability benefits until they reach the end of their healing period or until they return to work, whichever occurs first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). In its brief, respondents argued that "claimant was released to return to work and rated before he ever saw Dr. Reynolds. Dr. Reynolds

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could not take him off work retroactively.” There is no question that Dr. Brown released claimant at maximum medical improvement (MMI) on February 27, 2024, with a permanent impairment rating. There is also no question that when Dr. Reynolds saw claimant on May 20, 2024, for his initial examination, he stated in no uncertain terms that claimant had not reached MMI. I need not decide if Dr. Reynolds could retroactively excuse claimant from working before he saw him, because the proof in the case satisfies me that claimant had not reached the end of his healing period when Dr. Brown released him.

The Commission has the authority to accept or reject medical opinion and to determine its medical soundness and probative force, *LVL, Inc. v. Ragsdale*, 2011 Ark. App. 144, 381 S.W.3d 869. In reviewing the operative reports from Dr. Brown and Dr. Reynolds, it is apparent there was more damage to claimant’s knee than Dr. Brown realized. I therefore reject Dr. Brown’s finding of MMI as of February 27, 2024, accept Dr. Reynolds’ opinion that claimant had not reached the end of his healing period on May 20, 2024, and thus find that claimant has not yet reached MMI for his compensable injury of August 8, 2023.

Based on the stipulation as to the claimant’s compensation rate and my previous finding regarding MMI, claimant should have been paid \$564.00 weekly from the date of his injury until he is released from care by Dr. Reynolds or returns to work, whichever occurs first. Respondent is entitled to credit for all payments made to claimant, regardless of whether the payments were designated as TTD or PPD. Respondent will calculate the sum owed to claimant after taking proper credit for payments made during the pendency of this claim.

ORDER

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

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herein this Opinion. 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. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the 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. All issues not addressed herein are expressly reserved under the Act. If not already paid, Respondent is responsible for paying the court reporter her charges for preparation of the transcript.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE