

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G906168

GAIL TIBBETTS, Employee	CLAIMANT
WESTWOOD PRIMARY SCHOOL, Employer	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOC, Carrier	RESPONDENT

OPINION FILED NOVEMBER 15, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney at Law, Ozark, Arkansas.

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

STATEMENT OF THE CASE

On August 18, 2022, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 25, 2022, and a Pre-hearing Order was filed on May 25, 2022. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 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 relationship of employee-employer-carrier existed between the parties on September 13, 2019.
3. The claimant sustained a compensable injury to her right knee on September 13, 2019.

4. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$209.00 for temporary total disability benefits and \$157.00 for permanent partial disability benefits.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant is entitled to additional medical treatment regarding her compensable right knee injury after Dr. Christopher Arnold's initial Change of Physician evaluation in September 2020.

2. Whether Claimant is entitled to temporary total disability benefits from September 8, 2020, to a date yet to be determined.

3. Respondent raised statute of limitations as an affirmative defense regarding indemnity benefits.

4. Whether Claimant's attorney is entitled to an attorney fee.

Claimant's contentions are:

"1. The Claimant, Gail Tibbetts, sustained a compensable right knee injury on September 13, 2019, while working for Westwood Primary school in Greenwood, Arkansas.

2. Despite objective evidence of injury and providing medical and temporary total disability benefits, the Respondents later denied compensability of the Claimant's right knee injury.

3. The Claimant contends she is owed medical benefits for her right knee injury, including, but not limited to, a total knee replacement.

4. The Claimant contends she is owed temporary total disability benefits from September 8, 2020, to a date yet to be determined.

5. Due to the controversion of entitled benefits, the Respondents are obligated to pay on half of the Claimant's attorney's fees on both future and past indemnity benefits (*Lula L. Garrett v. Superior Marketing Service, Full Commission Opinion filed November 5, 2001 (E903251)*).

6. Claimant reserves the right to raise additional contentions at the hearing of this matter."

Respondents' contentions are:

“Respondents contend that all appropriate benefits have been paid with regard to Claimant’s compensable knee injury sustained on 9/13/19. Dr. Steven Smith opined that Claimant reached MMI on 5/26/20, and Claimant was released to full duty with no permanency being assigned. Dr. Smith also confirmed that Claimant’s lateral meniscus was intact when he did surgery on 3/18/20. As such, Claimant’s need for treatment after that date, if any, is due to a new tear or injury. Additional medical treatment is no longer reasonable and necessary or associated with the 9/13/19 date of injury. When regard to the statute of limitations, Claimant filed a Form C on 2/12/20, seeking only additional medical treatment. The statute of limitations has run for all other benefits, as the last medical and indemnity were both paid in September of 2020.”

The claimant in this matter is a 47-year-old female who sustained a compensable right knee injury on September 13, 2019. The claimant gave direct examination testimony about how her compensable right knee injury occurred as follows:

Q Okay. Now let’s jump into the real reason we are here, your workplace injury. When did you have your workplace injury?

A September 13th of 2019. It was Friday the 13th.

Q Okay. What happened?

A I went into the walk-in cooler and I grabbed a couple of bags of lettuce. I was walking out of the cooler with the lettuce and someone removed this grease pit rack from the floor and moved it and brought it in there, but nothing was there. I didn’t realize it was not there. So the floor was like an inch and a half off. I wasn’t even looking down and I just walked and I fell and that was it.

And all I remember was someone hollering, “Are you all right? Are you all right?” And I couldn’t even talk. I was just putting my hand up. My boss was telling me to, “Get up off the floor.” And the other person says, “Are you all right? Are you all right?” I was finally able to talk. I knocked myself or the wind out or knocked myself out. I was like wow.

So at that point the two employees picked me up and put me in a chair. And then they called down to the office and they

brought – a nurse came down or a fill-in nurse, put me in a wheelchair and wheeled me up to her station.

The assistant principal was writing down what I was saying what was wrong with me. I go, “Everything.” You know, “What hurts?” You know, I couldn’t even talk. I go, “Everything.” You know, my arms hurt, my legs, I mean at that point.

The central issue in this matter is the claimant’s entitlement to additional medical treatment for her compensable right knee injury after her initial Change of Physician evaluation with Dr. Christopher Arnold in September 2020.

The claimant was seen the same day as her fall, while working for the respondents, at Mercy Clinic Occupational Medicine in Fort Smith by Dr. Terry Clark. Initially, the claimant had pain and contusions on multiple body parts including her elbows bilaterally, left hip, and right knee. All of the claimant’s injuries have apparently resolved except for the claimant’s complaint of right knee difficulties. On September 17, 2019, the claimant underwent an MRI of the right knee without contrast, which was ordered by Dr. Clark. Following is a portion of that diagnostic testing report done at Mercy Tower West Fort Smith and authored by Dr. Deland Burks:

FINDINGS: Medial and lateral menisci are intact without evidence of tear. The anterior and posterior cruciate ligaments are intact without evidence of tear. The medial and lateral collateral ligaments are intact.

No focal articular cartilage defect or marrow edema. Small popliteal cyst posteromedially. There is a thin zone of T2 hyperintensity in the prepatellar region consistent with prepatellar edema or bursitis.

IMPRESSION:

1. No appreciable internal arrangement [sic] of the knee joint.
2. Small popliteal cyst posteromedially.
3. Thin zone of prepatellar fluid which may be prepatellar bursitis.

Dr. Clark again saw the claimant following her right knee MRI and diagnosed the claimant with a contusion of the right knee and Prepatellar Bursitis of the right knee. Dr. Clark's diagnosis regarding the claimant's right knee is consistent with the evaluation, treatment, and diagnostic tests performed on the claimant. The claimant's right knee complaints continued, and Dr. Clark ordered physical therapy for the claimant at Greenwood Physical Therapy. On November 25, 2019, Dr. Clark again saw the claimant. His visit note, in part, states "she has had no improvement in the right knee symptoms despite being off work, medications, physical therapy and time. For this reason, it is felt to be medically prudent at this time to seek the opinion of orthopedics."

The claimant was referred to Mercy Clinic Orthopedics and was initially seen by Patrick Walton, PA. Following is a portion of PA Walton's clinic note from his January 17, 2020, visit with the claimant:

HISTORY OF PRESENT ILLNESS: Ms. Tibbetts is a 44-year-old female. I have seen her for her knee for Workers' Comp. On September 13, she twisted it working at Greenwood Schools in the cafeteria. She has had an MRI that is negative for any internal derangement. I gave her an injection feeling like she had an exam consistent with a plica, and she feels like she is probably 90%-95% better. She really has not tested it though because apparently she got the flu. She has primarily been off for three weeks because of school being out and the flu.

PHYSICAL EXAMINATION: Passive motion pain is minimal. She is really not tender over her plica to palpation today. Vascularly intact distally with good pulses. Range of motion from 0 to 135 degrees. Minimal swelling. No ligamentous laxity. No complaints of numbness in her feet.

IMPRESSION: Plica syndrome of the right knee.

PLAN: She seems to be doing fine. My recommendation is for her to test this. We are going to put her on unrestricted duty and give it a month. If it flares up again, I think she would be a candidate for a

scope to resect the plica. We will see her back in a month. No x-rays needed. If she does well, we will release her. We will see how it goes.

The claimant was again seen by PA Walton on February 18, 2020. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS: Ms. Tibbetts is a Workers' Comp patient. She initially came in and had an MRI in hand from a Workers' Comp injury that happened on September 13. No internal derangement was the report. We diagnosed her with a plica syndrome feeling like that was where her pain was coming from. We gave her an injection and she did pretty well. Apparently, she had an acute onset again after having intercourse, so she is here today feeling like she is ready to get this taken care of. I do feel this is a flare up of her injury which she sustained at work because her complaints are the same and she never had this problem prior to September 13th.

IMPRESSION: Plica syndrome of the right knee.

PLAN: We are going to recommend at this point in time that she have a formal excision of her plica from the right knee through an arthroscopy. More than likely she is going to have some chondromalacia under her patella. This is giving her a little bit of issue at this point in time. We have got to get this approved through Workers' Comp, but after discussing with her the risks, benefits and alternatives, her plan was to do the knee arthroscopy. She gave consent. We will get this set up at her earliest convenience after it has been approved through Workers' Comp without x-rays being needed with her return followup for wound checks.

The claimant underwent surgical intervention on March 18, 2020, at the hands of Dr. Steven Smith of Mercy Orthopedic Hospital. Following is a portion of that operative report:

PREOPERATIVE DIAGNOSIS: Right knee pain with probable plica syndrome.

POSTOPERATIVE DIAGNOSIS:

1. Plica syndrome.
2. Superficial grade 3 chondromalacia of medial femoral condyle.

PROCEDURE:

1. Right knee arthroscopy.
2. Resection of anteromedial plica.

DESCRIPTION OF PROCEDURE: The patient was taken to the operating room, was given general anesthetic. Right lower extremity was sterilely prepped and draped. Superolateral, inferolateral, inferomedial arthroscopy portals established. Knee was arthroscoped. Moderate scarring in suprapatellar pouch seen with a large medial shelf medial chondromalacia noted where the plica had been abrading this area. Also a small area of very superficial grade 3 on the weightbearing portion of the medial femoral condyle with no flap instability. Medial meniscus was normal. ACL and PCL normal. Lateral compartment normal. We turned attention back to suprapatellar pouch, debrided the plica starting superior to the patella extending medial down the medial gutter back to the capsular rim. We then lavaged, closed and interrupted 4-0 nylon.

After surgery, the claimant received after care including additional physical therapy. The claimant was again seen by Dr. Smith on April 28, 2020. In his clinic notes, Dr. Smith stated, “Gail is seen today, follow-up of her right knee. She complains of kneeling, pain squatting, climbing stairs. We are going to allow her to return to work with no squatting, kneeling, or climbing ladders. She can return to work otherwise though. I’ll see her in 3-4 weeks, hopefully full exam at that point. Date of surgery was 3/18. She had plica with some far medial chondromalacia of the medial femoral condyle.” On May 26, 2020, Dr. Smith also saw the claimant. Following is a portion of that clinic note:

HISTORY OF PRESENT ILLNESS: Ms. Tibbetts is seen today. She is complaining of a little bit of achiness in her knee and a little bit of swelling but overall her knee looks quite good.

PLAN: I am going to release her to regular duty. I believe she is at MMI. She has no permanent impairment. We will release her at this point. I will see her back really just on an as-needed basis.

After the claimant was found at MMI and released to regular duty by Dr. Smith with no impairment, the claimant requested a Change of Physician to Dr. Chris Arnold, which was granted by the Commission on August 20, 2020. It appears Dr. Arnold first saw the claimant at Advanced Orthopedic Specialists on September 8, 2020. Dr. Arnold ordered a new MRI of the right knee at that time.

On September 18, 2020, the claimant underwent her second MRI of the right knee without contrast. Following is a portion of the diagnostic report signed by Dr. William Hocott:

FINDINGS:

Compared with 17 September, 2019. Very small popliteal cyst actually appears smaller than the previous years exam. Tear of the anterior horn of the lateral meniscus which is a progressive finding from previous years exam. The cruciate and collateral ligaments are intact. Degenerative type changes within the medial meniscus with no definite tear. Small knee joint effusion. Resolution of previous patellar edema since prior exam. No significant chondromalacia of the patella.

IMPRESSION:

Small joint effusion. Small tear anterior horn lateral meniscus.
Tiny popliteal cyst.

The MRI report of the claimant's right knee from September 18, 2020, states in the findings that it was compared to the claimant's September 17, 2019, MRI of the right knee. The 2020 right knee MRI report states, "tear of the anterior horn of the lateral meniscus which is a progressive finding from the previous year's exam." However, the 2019 right knee MRI report does not report any derangement in the right knee of that nature and states, "medial and lateral meniscus are intact without evidence of tear. The anterior and posterior cruciate ligaments are intact without evidence of tear. The medial and lateral collateral ligaments are intact." Dr. Smith's operative report from the right knee arthroscopy he performed on the claimant on March 18, 2020, also supports the 2019 right knee MRI findings. A careful reading of the description of

procedure section of the operative report reveals no tears and states, “medial meniscus was normal. ACL and PCL normal. Lateral compartment normal.”

Dr. Arnold continued to treat the claimant’s right knee with a second arthroscopic surgery on October 23, 2020, and eventually did a total right knee arthroplasty on September 24, 2021. There is a clear change in the claimant’s MRIs from 2019 to 2020. The operative note of Dr. Smith’s supports the fact that no tear existed at the time he performed the claimant’s March 18, 2020, right knee arthroscopy. I am not certain what happened or caused the derangement found in the claimant’s right knee when she underwent her 2020 right knee MRI, but I am confident that it was not due to her September 13, 2019, compensable right knee injury which according to the right knee MRI performed on September 17, 2019, four days later, showed, “1. No appreciable internal arrangement [sic] of the knee joint. 2. Small popliteal cysts posteromedially. 3. Thin zone of prepatellar fluid which may be prepatellar bursitis.”

I would also note the opinion of Dr. Ethan Schock, who reviewed the claimant’s medical records and wrote an opinion concerning the claimant’s medical treatment for her right knee after she was found at maximum medical improvement by Dr. Smith on May 26, 2020, as follows:

Employee: Gail Tibbetts

Employer: Greenwood school district

Date of injury: 9/13/2019

Claim #: 140914

AWCC file #: G906188

I have been asked by Misty Thompson, Worker’s Comp, claims adjuster, to provide a medical orthopedic opinion with respect to the aforementioned patient.

Specifically, I am asked to provide “opinion as to whether the treatment AFTER, Dr. Smith’s MMI date of 5/26/2020 was reasonable and necessary associated with the 9/13/2019 injury.”

I have been provided with medical records on this patient dating back to initial presentation on 9/13/2019 up to 1/11/2022. These include clinic notes, x-ray reports, MRI reports (2), ultrasound results/reports (4), and operative reports (4).

My opinion is provided with a reasonable degree of medical certainty.

The patient, Gail Tibbetts, was initially seen on 9/13/2019 for a work-related injury, falling into a grease pit, on that same day. This has been established, at all points in the record as the causative source of, initially, multiple complaints, including right knee pain. Work-up of the right knee included MRI which was performed on 9/20/2019 and the report is read as showing abnormality only of a “prepatellar bursitis”.

Note is made on 10/10/2019 of a motor vehicle accident which occurred the day before with exacerbation of her knee pain. And, due to ongoing right knee pain, despite appropriate conservative management, she was referred to an orthopedic surgeon, Dr. Smith, who on 12/13/2019 felt that she may have a plica syndrome and noted a “90%” improvement in symptoms after an intra-articular steroid injection.

Due to failure to tolerate return to work, arthroscopic surgery of the right knee was recommended and performed on 3/18/2020 by Dr. Smith. Operative note for this procedure described a resected plica, grade 3 medial femoral condyle degenerative changes, patellofemoral degenerative changes and no evidence of meniscal tear.

Dr. Smith’s clinic note from 5/26/2020 identifies patient at maximum medical improvement. I do not see a record of an impairment rating at this time.

Patient furthered her right knee care with Dr. Chris Arnold in Fayetteville, Arkansas. Initially, she was seen on 9/8/2020 with final visit documentation noted to be 1/11/2022.

During this time the patient was noted to have ongoing knee pain with MRI on 9/18/2020 demonstrating a “new lateral meniscus

tear” involving the anterior horn as well as degenerative changes in the medial and patellofemoral compartments.

She proceeded to arthroscopic surgery of the right knee with Dr. Arnold on 10/23/2020. Operative note describes grade 3 patellofemoral, grade 3 medial femoral condyle degenerative changes, “extensor mechanism malalignment” and no evidence of tear of the medial or lateral meniscus. Procedure is described as chondroplasty of these compartments.

Subsequent visits including a discussion of possible cartilage preservation/restorative procedures as well as total knee arthroplasty.

Postoperatively, on 3/2/2020 the patient had the first of 4 lower extremity Doppler ultrasounds provided. This and all similar tests were negative.

Patient received a steroid injection on the same visit.

On 11/27/2021, the note reflects a discussion of possible cartilage restorative procedure versus total knee arthroplasty due to ongoing pain. An injection was also performed on this date.

Later notes suggest that the total knee arthroplasty was actually scheduled but needed to be postponed secondary to a cervical spine surgery performed on 8/4/2021. No further information on the cervical spine is included in this medical record. Ultimately, the patient underwent RIGHT TOTAL KNEE arthroplasty on 9/24/2021. Pathology report suggests eburnation and otherwise benign appearance to the proximal tibia specimen provided.

Subsequent notes suggest a diagnosis of “stitch abscess and arthrofibrosis on 10/26/2021.

A manipulation under anesthesia was performed on 11/23/2021.

The last note provided is dated 1/11/2022 which describes flexion to 120 degrees.

Is my opinion that the patient’s mechanism of injury, description of symptoms, radiologic studies, and intraoperative findings do not suggest a reasonable causality and necessary association for the orthopedic treatments, office visits, radiologic studies (MRI, x-ray, ultrasound), or surgical intervention (second arthroscopic

procedure, total knee arthroplasty, and manipulation under anesthesia).

There does not appear to be an MRI documented structural defect nor arthroscopic intraoperative observation from 10/23/2020, to suggest a causal relationship from the 9/13/2019 work-related injury.

There does not appear to be any evidence to suggest an acute structural injury that can be associated with the 9/13/2019 work-related injury that could, within a reasonable degree of medical certainty, be directly causal to the development of osteoarthritis or need for total knee arthroplasty in such a short period of time (September 2019 to November 2020, the date at which Dr. Arnold, recommended this surgery).

Rather, all described radiologic and intraoperative findings appear to be consistent with a more chronic, preexistent, and degenerative process.

It is the claimant's burden to prove by a preponderance of the evidence that the additional medical treatment provided by Dr. Arnold was reasonable and necessary medical treatment for her September 13, 2019, compensable right knee injury. Here, the claimant is unable to do so. While it is clear that derangement was present in the claimant's right knee when the 2020 MRI was performed, it is also plain to see that right knee derangement was not present during the claimant's 2019 right knee MRI or when the claimant had arthroscopic surgery on March 18, 2020. The claimant has failed to meet her burden regarding additional medical treatment.

The claimant has asked the Commission to determine whether she is entitled to temporary total disability benefits from September 8, 2020, to a date yet to be determined. After a review of the evidence and testimony, I find that the claimant reached maximum medical improvement for her compensable September 13, 2019, right knee injury on May 26, 2020, as set forth by Dr. Smith in his clinic note dated that same day. As the claimant has not shown evidence that she reentered her healing period after that time and she was returned to work at full duty

with no impairment, the claimant is unable to prove entitlement to temporary total disability benefits from September 8, 2020, to a date yet to be determined.

The issue of the statute of limitations raised by the respondent in this matter is moot as the claimant is unable to prove entitlement to any indemnity benefits at this time.

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 the pre-hearing conference conducted on May 25, 2022, and contained in a Pre-hearing Order filed May 25, 2022, are hereby accepted as fact.

2. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment regarding her compensable right knee injury after Dr. Chris Arnold's initial Change of Physician evaluation in September 2020.

3. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits from September 8, 2020, to a date yet to be determined.

4. The issue of statute of limitations raised by the respondent in this matter is moot as the claimant is unable to prove entitlement to any indemnity benefits at this time.

5. The claimant has failed to prove that her attorney is entitled to an attorney's fee in this matter.

ORDER

Pursuant to the above findings and conclusions, I have no alternative but to deny this claim in its entirety.

IT IS SO ORDERED.

**HONORABLE ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE**