

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H000861

RACHEL D. TURNER, EMPLOYEE

CLAIMANT

MEMS, EMPLOYER

RESPONDENT

**BRIDGEFIELD CASUALTY INS. CO. / SUMMIT
CONSULTING, LLC, CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 22, 2021

A hearing was held before ADMINISTRATIVE LAW JUDGE KATIE ANDERSON, in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Steven R. McNeely, Attorney at Law, Jacksonville, Arkansas.

Respondents were represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-captioned claim on March 25, 2021, in Little Rock, Arkansas. A Pre-Hearing Order was previously entered in this case on January 20, 2021. The Pre-Hearing Order has been marked as Commission's Exhibit #1 and was made a part of the record without any objection from the parties.

Stipulations:

During the pre-hearing telephone conference and/or during the hearing, the parties agreed to the following stipulations. They read:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employer-employee relationship existed on December 7, 2019, at which time Claimant was earning sufficient wages to entitle her to temporary total disability (TTD)/permanent partial disability (PPD) compensation rates of \$688.00/\$521.00, in the event the claim is found to be compensable.

3. Respondents have controverted this claim in its entirety.
4. All issues not litigated herein are reserved under the Act.

Issues:

The parties agreed to litigate the following issues, which were also clarified at the hearing:

1. Compensability of Claimant's alleged injury of December 7, 2019.
2. Claimant's entitlement to reasonably necessary medical care and expenses.
3. TTD benefits from January 30, 2020¹, through a date yet to be determined.
4. In the alternative, whether Respondents are entitled to credit for long-term disability payments made to Claimant.
5. Attorney's fees.

Contentions:

The following contentions were submitted by the parties:

Claimant contends that she worked for Respondent-Employer as a first responder. Claimant contends that on December 7, 2019, she was working a motor vehicle accident (MVA) in the course and scope of her employment and injured her right knee traversing rough ground. Claimant contends she is entitled to the payment of reasonable and necessary medical treatment for the above conditions under Rule 099.30, including a right knee arthroscopy on February 19, 2020. Claimant contends she is entitled to temporary total disability benefits (TTD) from February 19, 2020², the date of her knee surgery, to a date yet to be determined. Claimant contends the below benefits have been denied and she is entitled to an attorney's fee. Claimant specifically reserves any benefits not claimed herein.

¹ Prior to the hearing, Claimant's Counsel changed this date from February 19, 2020, to January 30, 2020.

² As noted above, Claimant's Counsel modified this date to January 30, 2020, prior to the hearing.

Respondents contend that Claimant did not sustain a compensable injury within the course and scope of her employment. At the hearing, Respondents also added that in the alternative, Respondents are entitled to a credit for long-term disability payments made to Claimant.

Summary of Evidence:

The record consists of the hearing transcript of March 25, 2021, and the exhibits contained therein. Specifically, the following exhibits have been made a part of the record without objection: Commission's Exhibit #1 included the Pre-Hearing Order entered on January 20, 2021, and the parties' responses to the prehearing questionnaire; Claimant's Exhibit #1 was sixty-six (66) pages in length and consisted of medical records; Claimant's Exhibit #2 was twelve (12) pages in length and consisted of the Social Security Administration Decision; Respondents' Exhibit #1 was sixty-two (62) pages in length and consisted of medical records; Respondents' Exhibit #2 was fourteen (14) pages in length and included Claimant's shift schedule and documentation of Claimant's receipt of short-term and long-term disability.

Witnesses:

During the hearing, the following individuals testified: Rachel D. Turner (Claimant, used interchangeably herein), Adam Uptain, Susan Conrad, Lauren Eason, Carrie Steward, and Sheila Hall.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidence and other matters properly before the Commission, and after having had an opportunity to hear the testimony of the witnesses and observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. I accept the above stipulations as fact.
3. Claimant failed to prove by a preponderance of the credible evidence that she sustained a compensable injury to her right knee when she stepped into an ambulance while at work for Respondent-Employer on December 7, 2019.
4. All other issues have been rendered moot.

CASE IN CHIEF

Hearing Testimony:

Claimant was forty-one (41) years old at the time of the hearing (birthdate December 11, 1979). Claimant testified that she graduated from college with two (2) associate degrees: one in Science and one in Arts and General Education. Before becoming employed with Respondent-Employer, she worked in the Baptist Emergency Room for five (5) years, where she worked in admissions and as a patient care technician.³ She was hired by Respondent-Employer in 2014 and worked as an emergency medical technician (EMT).⁴ Her job duties included driving the ambulance and assisting the paramedic in the back of the ambulance. The following exchange occurred regarding Claimant's work schedule while with Respondent-Employer:

- A Two 12-hour shifts on. It was two on, three off, three on, two off, 12-hour shifts, and then I switched to 24-hour shifts towards the end.
- Q So if I take a seven-day week from Monday to Sunday, how many days would you work one week and then the next week?
- A Monday, Tuesday; off Wednesday, Thursday; and then work Friday, Saturday, Sunday; and then off Monday, Tuesday. And it rotated that way.
- Q All right. And how many hours were each one of those shifts?

³ On cross-examination, Claimant also stated that she had previous work experience, including some management experience, in the fast-food and restaurant industry and the retail industry. She also had experience in accounts receivables and collections at Complete Care.

⁴ Claimant testified on cross-examination that she had her EMT certification and her CPR certification, but that she was unable to complete her training to become a paramedic.

A Twelve-hour shifts.

Claimant testified that prior to going to work for Respondent-Employer, she had undergone five (5) surgical procedures on her left knee (not at issue in the current matter). Despite the surgeries, she stated that she did not have any permanent restrictions with her left knee. As needed, she took ibuprofen for her left knee and other aches and pains. Testimony also showed that Claimant was under the care of a psychiatrist at Chenal Family Clinic, where she was prescribed medication and individual therapy for bipolar disorder, depression, anxiety, sleep issues, and attention deficit hyperactivity disorder. Claimant further testified that she had a previous work injury to her right wrist, and thus, had experience reporting a work-related injury to Respondent-Employer. For the right wrist injury, she underwent treatment and was released a few days prior to her work incident on December 7, 2019.

On December 7, 2019, while responding to a motor vehicle accident (MVA) with partner Kendra Rogers, Claimant said she felt a pop in her right knee as she stepped into the ambulance. After the December 7th incident, Claimant continued working regular shifts and performing her regular duties. She would occasionally have to “prop [the knee] up and put ice on it because it was bothering” her. Claimant stated that since December 7, 2019, she often experienced tenderness and swelling in her right knee. Claimant testified that she had not had any other injuries to her right knee since December 7, 2019.

Claimant reported the injury to Carrie Steward the end of January of 2020, when she was experiencing decreased range of motion and was unable to fully extend her right knee when climbing steps. Claimant said she took only one (1) day of paid time off between December 7, 2019, and the end of January of 2020, and her last day with Respondent-Employer was approximately January 26, 2020. Claimant had not returned to work for Respondent-Employer

since that date. Claimant testified that Respondent-Employer did not have light-duty or sedentary work available to offer her and that she was ultimately terminated on or around May 28, 2020.

Claimant testified that she saw Dr. Lipke in January of 2020, and underwent surgery on her right knee in February of 2020. Claimant testified that she had not elected to undergo any additional surgery, despite a recommendation for additional surgery on her right knee, due to financial concerns.

When questioned regarding her relationship with Lauren Eason, Claimant testified that their relationship began as a friendship, and Ms. Eason had allowed her to move into a camper on her property. Once Claimant and Ms. Eason's ex-girlfriend began a relationship, Claimant's friendship with Ms. Eason ended. Regarding whether Ms. Eason would have a reason to be hostile, Claimant responded that Ms. Eason did not "like the situation that we are together at all."

With regard to whether Claimant had worked since her employment with Respondent-employer, Claimant testified that Ms. Eason helped her by letting her "ride around in the truck with her, do small things." Eason gave Claimant opportunities to earn money to cover living expenses and rent, but Claimant did not complete any employment paperwork or receive a W-2 or a 1099.

During cross-examination, Claimant clarified that, at the time of her deposition in February of 2021, she stated that she was living in an RV camper on Ms. Eason's land with Wendy Romine. Claimant had lived there approximately one (1) year and was paying rent to Ms. Eason.

When questioned about her previous workers' compensation claim on her right wrist, Claimant testified that she knew what steps to take to report an on-the-job injury, including

reporting the injury immediately. Furthermore, she stated that she had been trained during orientation on those policies and procedures.

During cross-examination, Claimant admitted that despite her deposition testimony that she had never injured her right knee; that she had never had any swelling or pain in her right knee; that she had never complained to a doctor about her right knee; that she had never had any problems with her right knee, and that she had never had any surgery on her right knee before December 7, 2019, all of those statements were untrue. At the hearing, Claimant admitted that she had, in fact, injured her right knee and had undergone surgery on her right knee prior to December 7, 2019.

With regard to Claimant's alleged work injury on December 7, 2019, Claimant testified on cross examination that she was wearing appropriate military-style boots and that she did not fall or slip in the mud while working the accident. Claimant also admitted that she continued to work the day of her injury until the end of her shift; that she worked her shift the next day at full duty; and that she even picked up a number of extra shifts between December 7, 2019, and the time she reported the injury in late January of 2020 (approximately one and one-half months later). Claimant testified that she did not share with her co-workers that her right knee was causing any problems with any of her work activities.

Claimant testified in her deposition that she had not been treated by Dr. Lipke for right knee issues prior to the December 7, 2019, incident. However, at the hearing, Claimant admitted that she had, in fact, seen Dr. Lipke for her right knee in 2018. She also testified at the hearing that, after her first knee injury in 2018, she experienced swelling and immobility issues with her right knee. However, over time, Claimant treated her knee pain with ibuprofen and continued working as an EMT for Respondent-Employer.

Claimant testified that she was terminated from her employment with Respondent-Employer once she had exhausted her leave under the Family Medical Leave Act (FMLA). She testified at her deposition that she had not worked anywhere since February of 2020; however, she admitted at the hearing that she had done some work for Ms. Eason, for which she was receiving income. Claimant stated that her work for Ms. Eason included painting, working in flower beds, framing floors, putting wood floors down, and other remodeling work. In exchange for the work, Ms. Eason would pay Claimant some of what she had earned and the rest was withheld for her rent payment. By way of example, Claimant testified that in August of 2020, Claimant was owed \$300 for work she had done. Ms. Eason kept \$200 for rent and paid the remainder of \$100 to Claimant. She stopped working for Ms. Eason in March of 2021.

Claimant testified that she received short-term disability benefits from Respondent-Employer for a period of time and then began receiving long-term disability benefits on April 23, 2020. At the time of the hearing, Claimant was receiving approximately \$1,300.00 per month in long-term disability. Claimant also testified that she applied for Social Security Disability (SSD) based on her diagnoses of post-traumatic stress disorder, anxiety, depression, and bipolar disorder. Claimant stated that she had suffered from symptoms of these conditions since 2017, when she witnessed a motor vehicle accident that involved her brother. However, she worked for Respondent-Employer for several years with these conditions and continued working for Respondent-Employer until 2020 and for Ms. Eason until 2021. Claimant's request for Social Security Disability benefits was ultimately denied.

Claimant also testified that she had not looked for work since her work with Respondent-Employer in 2020 because of her mental health conditions. She explained that her mental health symptoms worsened over time, but that on an average day, she cooked, cleaned, did the dishes,

vacuumed, washed clothes, and drove a vehicle. Claimant testified that she had some anxiety with driving a car after 2017 when she witnessed her brother's accident, however, she drove an ambulance as one of her primary job duties during her time with Respondent-Employer.

During cross-examination, Claimant was unable to answer questions regarding how many work-related claims she had filed while working for Respondent-Employer. Specifically, Claimant stated, "I worked there five years. I don't - - I can't recall. I mean, I know that I hurt my wrist. I might have reported other things that I might have hurt, but I honestly cannot remember after being there five years. I don't know." She also admitted that when completing her workers' compensation paperwork, she answered, "This is claimant's first major workers' comp claim." Claimant admitted she also did not report any other work injury on the workers' compensation paperwork, including a right wrist, or right knee.

On cross-examination, Claimant maintained that she had not worked after the 2019 alleged right knee injury and that her work for Ms. Eason was just a "friend helping out a friend."

Claimant testified that she visited her family physician after the December 7, 2019, alleged work-related injury to her right knee, as well as Chenal Family Therapy clinic for psychotherapy on December 28, December 30, and January 7, but she did not make any report of a right knee injury at work on December 7, 2019, at those appointments. Moreover, at the January 7th visit, clinic records showed that Claimant reported loving her job, but that she was "just done" with the job. She was also seen at Bryant Family Clinic by her primary care physician on January 15, 2020, and she stated that she did not report a December 7, 2019, work-related injury to her right knee. On January 22, 2020, Claimant presented at Chenal Family Therapy Clinic, where her physical evaluation notes stated that she had, "no musculoskeletal issues." Claimant stated that her

December 7th and January 22nd visits to her medical providers were for reasons other than her right knee, and she assumed that was why there was no mention of the right knee injury.

Upon re-direct examination, Claimant testified that she did not initially report her injury to Respondent-Employer until she had difficulty walking up the stairs in late January of 2020 because in her line of work “if you just tweak something and ma[k]e it sore, you just kind of walk it off and keep doing the job because that’s what we all do. You work being sick. You work being hurt unless it is too far to where you can’t do something.” She further testified that Respondent-Employer did not offer her light-duty work after December 7, 2019.

On re-direct, Claimant testified that there were occasions after December 7, 2019, and January 26th or 27th of 2020 when she had to prop her knee up and ice it, but she did not report those instances and did not report an alleged work-related injury to her right knee until January 26th or 27th of 2020.

Adam Uptain, a paramedic with Respondent-Employer, testified that he worked the accident with Claimant on December 7, 2019. He testified that Claimant did not mention an injury to her right knee. He stated that in the event Claimant had mentioned an injury that was significant enough that she would have needed medical care, he would have examined her and encouraged her to call the supervisor. Subsequently, both he and Claimant would have been required to complete an incident report. Mr. Uptain could not recall seeing Claimant prop her knee up or icing her knee after December 7, 2019, and he did not recall working with Claimant again between December 7, 2019, and the end of January of 2020.

Susan Conrad, a human resources manager for Respondent-Employer, testified that Claimant received long-term disability beginning on May 1, 2020, and that she was still receiving

benefits at the time of the hearing. She explained that Claimant was receiving \$1,376.00 per month in long-term disability benefits.

Lauren Eason testified that she owned ER Home and Lawn, a residential remodeling and landscaping company. Ms. Eason explained that she used subcontractors for the various jobs. She also explained that Claimant began working for her at ER Home and Lawn in March of 2020 and continued doing work for her until March of 2021. Claimant worked in exchange for rent for an RV camper on Ms. Eason's property, and her earnings over and above the rent amount were paid to her. Ms. Eason explained that Claimant's rent payment of \$200 per week included utilities, groceries, internet, cable, electricity, and water. The pay/time worked varied by job, was weather-dependent, and was based off of minimum wage. Ms. Eason testified that Claimant did all types of jobs for her company. For instance, her work included: breaking up an old tile floor, mowing yards, cleaning out flower beds, painting, putting down concrete, and building a deck. Ms. Eason testified that Claimant was physically able to do the work. She also testified that she was aware that Claimant was drawing disability benefits while she was working for her residential remodeling and landscaping company. When asked if she would consider Claimant to be disabled, Ms. Eason responded, "No, I would not." She described the relationship with Claimant as mutually beneficial in that while she was helping Claimant earn enough money to pay her bills, Claimant was providing work for Ms. Eason's business.

On cross examination, Ms. Eason explained that she did not send a 1099 or a W-2 to Claimant specifically and that she did not withhold taxes or have workers' compensation insurance on any of her subcontractors. Ms. Eason explained that she had recently asked Claimant to leave the property, as their friendship had deteriorated.

Carrie Steward, risk and safety manager for Respondent-Employer, testified that workers' compensation claims were normally reviewed by her office. She testified that Claimant had prior workers' compensation claims while employed with Respondent-Employer. Those claims had been reported by Claimant, paperwork had been completed, treatment had been provided to Claimant, and Claimant had been off work for a certain period of time. Ms. Steward testified that employees were trained as to how to report injuries as part of their initial orientation. She stated that Claimant reported an alleged work-related injury to her right knee on or around January 27, 2020, and Claimant stated that her "knee felt like it did before." Ms. Steward assumed that Claimant was referring to prior problems with that knee. Claimant, however, did not provide a specific event or incident or date of injury. Ms. Steward testified that she did not learn the date of the injury until after the Form AR-N was completed. Ms. Steward then attempted to investigate the incident, but she was unable to obtain any specific information regarding Claimant's alleged injury. She stated that if any information about Claimant's injury on December 7, 2019, had been shared with Claimant's co-workers or supervisors, it should have provided to her as a matter of procedure. However, Ms. Steward did not have any knowledge of an alleged work-related injury to Claimant's right knee until January 27, 2020.

Ms. Steward further testified that after December 8, 2019, Claimant picked up several extra shifts, in addition to her regular shifts for Respondent-Employer. Specifically, Ms. Steward testified that Claimant picked up ten (10) extra shifts before she reported the work-related incident to Ms. Steward on January 27, 2020. Ms. Steward also testified that she was not notified by Mr. Uptain or Claimant's supervisor, Ms. Courtney Hager, that Claimant alleged a work-related injury to her right knee or that Claimant was having any issues with her right knee. Lastly, when Ms. Steward spoke with Claimant about her alleged work-related injury for the first time on January

27, 2020, Claimant did not describe any particular date that she claimed to have injured her knee at work.

On cross examination, Ms. Steward testified that Respondent-Employer did have sedentary work that was offered to employees, but that she was unsure if Respondent-Employer offered Claimant light-duty work. She also testified that Claimant no longer worked for Respondent-Employer.

Sheila Hall testified that she was a field adjuster for Summit Consulting. She stated that Ms. Steward called her on January 27, 2020, regarding Claimant's alleged right knee injury. That same day, Ms. Hall contacted Claimant to get a statement from her about Claimant's right knee. Claimant informed Ms. Hall that her "right knee had been hurting and it would subside and then it would come and go, but this time it didn't subside." When Ms. Hall asked Claimant specifically what happened to her knee, Claimant responded that she "didn't know. She had no idea what had gone on." Claimant kept stating that she had trouble with her right knee swelling since her surgery. Ms. Hall stated that she assumed Claimant was referring to her surgery in 2018. Claimant also stated that she took ibuprofen daily. Claimant eventually mentioned working a wreck on December 7, 2019, but she stated that she did not fall or trip over anything. When asked why she was having knee pain on January 27, 2020, Claimant stated that her knee locked up when she was climbing up the steps.

Ms. Hall further testified that Claimant's previous claims included a left knee claim on June 24, 2016; a left knee claim on November 21, 2016; a right knee claim on January 11, 2018; a right ankle claim on September 12, 2019; and a right wrist claim on November 23, 2019, all of which were reported either the day of the injury or the day after. Ms. Hall testified that the Form AR-N was signed on January 28, 2020.

Ms. Hall testified that she subsequently arranged an appointment for Claimant to see Dr. Lipke. Ms. Hall stated that there were no new findings when the most recent MRI was compared to a previous MRI from January of 2018. Thus, the claim was denied. Ms. Hall testified that in order to receive temporary total disability benefits, as well as short-term and long-term disability benefits, an employee must have been unable to work at all. Had Ms. Hall known that Claimant was performing work duties for Ms. Eason, she would have requested a credit or reduction in benefit payments to Claimant.

Medical Exhibits:

Medical records showed that on January 12, 2018, Claimant sprained her right knee. While at work, Claimant was climbing into an emergency medical services vehicle when she heard a “pop” in her right knee. She experienced pain immediately thereafter. An MRI of Claimant’s right knee revealed a fissure in the medial femoral condyle, as well as some areas of myofascial strain and edema. Claimant was placed on light-duty work and underwent physical therapy with minimal results. Ultimately on March 8, 2018, Claimant underwent surgery performed by Dr. Jay Lipke consisting of a right knee arthroscopy with debridement of medial femoral condyle and prominent medial synovial shelf/plica. On April 13, 2018, Claimant was released to return to work at full duty. Dr. Lipke opined that Claimant was at the end of her healing period and that she had zero percent (0%) impairment to the right lower extremity.

Medical records also showed that in December of 2019, Claimant was diagnosed with post-traumatic stress disorder and mild major depressive disorder. Individual therapy and medication were recommended. Records from Chenal Family Therapy showed that Claimant attended individual therapy sessions in January of 2020 and that she was also treated with medication.

On January 30, 2020, Claimant saw Dr. Jay Lipke at OrthoArkansas with complaints of knee pain since December of 2019 when she tweaked her knee at work while working as an EMT and traversing rough ground. Dr. Lipke noted Claimant's previous right knee arthroscopy in 2018 with medial femoral condyle debridement and synovial plica resection. Claimant's chart also indicated that she had five (5) previous surgeries on her left knee as well. Dr. Lipke ordered an MRI of her right knee.

The next week, on February 6, 2020, Claimant had a follow-up appointment with Dr. Lipke. Claimant's MRI results revealed a medial femoral condylar full-thickness chondral defect, medial femoral condylar focal edema, and significant effusion. She was put on light-duty work. Dr. Lipke recommended a right knee arthroscopy with probable subchondroplasty and medial femoral condylar chondroplasty.

Claimant underwent a right knee arthroscopy with medial femoral condylar chondroplasty and subchondroplasty performed by Dr. Lipke on February 19, 2020.

Claimant returned to Dr. Lipke on March 2, 2020, for a post-operative appointment. That day, Claimant reported significant improvement. Dr. Lipke's clinic notes indicated a nonantalgic gait, full range of motion, and minimal swelling in Claimant's right knee.

At a March 16, 2020, follow-up appointment with Dr. Lipke, Claimant reported moderate improvement in her right knee since the surgery but complained of pain when getting up from a seated position and when walking up and down stairs. Claimant was instructed to remain off work and to continue her home exercise program.

On April 1, 2020, Claimant saw Dr. Kirk Reynolds, also at OrthoArkansas, at the recommendation of Dr. Lipke, for continued evaluation of her continued pain in the right knee post-surgery. Dr. Reynolds recommended an articular cartilage reconstruction, which would

require two (2) additional surgeries. While scheduling issues due to Covid-19 were addressed, Claimant was to continue her home exercises.

In the meantime, she returned to Dr. Lipke on April 7, 2020 and again on May 14, 2020. On both occasions, Dr. Lipke recommended that Claimant continue home exercises to strengthen her quadriceps. He also noted that she remained temporarily totally disabled due to her work injury and that she should remain off work.

On April 8, 2020, Claimant visited Bryant Family Clinic, P.A. where she saw Leslie Chambers, APRN. Clinic notes indicated that Claimant was seeing psychiatrist, Dr. Mark Anderson, who had diagnosed her with post-traumatic stress disorder and who was managing her medication. Claimant was also undergoing individual therapy with Kelly Ayers. Nurse Chambers also noted that Claimant had been previously diagnosed with bipolar II disorder and that Dr. Anderson was currently working on the proper adjustments to her bipolar medication. Notes also indicated that Claimant was no longer able to perform her job in emergency services because of her psychological condition. That day, Claimant was diagnosed with bipolar II disorder, attention deficit disorder, insomnia, hyperlipidemia, and prediabetes.

Claimant next saw Dr. Reynolds on May 13, 2020. Dr. Reynolds' clinic notes indicated that Claimant continued to complain of pain in her right knee described as intermittent aching with occasional sharp pains and a sensation of locking with deep flexion. Claimant also reported difficulty ascending and descending stairs because of medial pain. Upon examination, Dr. Reynolds noted that Claimant's surgical incisions had healed completely and that the right lower extremity was neurovascularly intact distally. Further, the right knee had moderate effusion and tenderness along the soft spot overlying the medial femoral condyle. Claimant wanted to postpone

any surgery due to the pandemic. In the meantime, Dr. Reynolds placed her into a medial unloader brace to see if it would give her some symptomatic relief.

On July 29, 2020, Claimant returned to Dr. Reynolds and reported that her symptoms were about the same. She reported continued weightbearing pain and an effusion after prolonged activity. Claimant reported difficulty wearing the brace because of bruising on the posterior aspect of the thigh. Dr. Reynolds noted that Claimant had good pain relief when wearing her brace, which was a positive predictor for success after chondral reconstruction. Dr. Reynolds opined that Claimant's symptoms were related to her work injury. He stated that Claimant should remain on modified duty with no kneeling, squatting, or climbing and instructed her to wear her brace as needed.

When Claimant returned to Dr. Reynolds on December 23, 2020, Dr. Reynolds administered an intra-articular injection to alleviate some of her pain. Dr. Reynolds released Claimant to return to work that day with the following restrictions: no kneeling, squatting, or climbing.

Documentary Exhibits:

Claimant submitted a decision by the Social Security Administration dated February 24, 2021, where a determination was made that Claimant was not disabled.

Respondents submitted Little Rock Ambulance Authority work schedule for Claimant ranging from December 3, 2019, through May 28, 2020.

Respondents also introduced disability documentation paperwork, indicating that Claimant had received short-term and long-term disability benefits.

ADJUDICATION

A. Compensability:

Claimant contends that she sustained a compensable injury to her right knee when she stepped into an ambulance while performing her employment duties for Respondent-Employer on December 7, 2019. Respondents contend that Claimant did not sustain a compensable injury within the course and scope of her employment.

Ark. Code Ann. § 11-9-102(4)(A) defines "compensable injury" as:

(i) An accidental injury causing internal or external physical harm to the body or accidental injury to prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i).

Claimant must prove by a preponderance of the evidence that he sustained a compensable injury. Ark. Code Ann. § 11-9-102(4)(E)(i). Preponderance of the evidence means the evidence having greater weight or convincing force. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 206 S.W.2d 442 (1947).

It is well-settled that under Arkansas workers' compensation law that an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. Hickman v. Kellogg, Brown & Root, 372 Ark. 501, 277 S.W.3d 591 (2008). A pre-existing disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which workers' compensation is sought. Id. An aggravation is a new injury resulting from an

independent incident, and being a new injury with an independent cause, it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Id.* at 511-12, 277 S.W.3d at 600.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that Claimant has failed to establish by a preponderance of the credible evidence that she sustained a compensable right knee injury, arising out of, and in the course of her employment with the Respondent-Employer on December 7, 2019.

In the present matter, I find that Claimant was not credible because she gave inconsistent and incredulous testimony concerning an alleged right knee injury on December 7, 2019.

Specifically, Claimant testified at her deposition that she had not had any prior injuries to her right knee before December 7, 2019; that she had not seen a doctor for any right knee complaints prior to December 7, 2019; that she had not experienced right knee pain prior to December 7, 2019; that she had not undergone any surgery on her right knee prior to December 7, 2019; that she had not ever had any problems with the right knee; and that she had not ever had any treatment, pain, swelling, or issues at all with her right knee. Claimant also testified at her deposition that she had not seen Dr. Lipke for any treatment on her right knee prior to December 7, 2019. During cross-examination, however, Claimant admitted that all of those statements from her deposition were untrue, and the medical records supported the fact that those statements made during Claimant's deposition testimony were false.

At the hearing, Claimant was unable to recall what injuries she sustained prior to 2018 while working for Respondent-Employer and admitted that she had provided answers during discovery that the alleged right knee injury in 2019 was her first major workers' compensation injury. When, in fact, the testimony from Ms. Hall revealed that Claimant had filed five (5)

previous workers' compensation claims (including a previous right knee claim and a previous left knee claim) in the five (5) years she had worked for Respondent-Employer. I find Ms. Hall's testimony to be credible.

Moreover, Claimant admitted during cross-examination that she attended five (5) appointments with her physicians and medical providers between December 7, 2019, and January 22, 2020, and did not report to any of those medical providers that she allegedly suffered an injury to her right knee while at work on December 7, 2019. Claimant did not seek any medical treatment for her alleged right knee injury until after she reported the incident on or around January 27, 2020, one and one-half (1.5) months her alleged right knee injury.

Claimant testified that while she felt pain in her right knee after stepping into an ambulance on December 7, 2019, she was able to continue working her shift at full duty that day. Testimony also showed that Claimant worked her next scheduled shift (at full duty) the following day. In fact, Claimant continued working at full duty until approximately January 26th or 27th of 2020, and testimony and documentary evidence showed that she accepted ten (10) extra shifts between December 7, 2019, and January 27, 2020.

Furthermore, Claimant admitted that she did not tell any of her co-workers on December 7, 2019, that she had suffered a right knee injury that day, nor did she share with them that she experienced pain, swelling, and issues with mobility in her right knee after December 7th. Mr. Uptain credibly testified that Claimant did not mention or exhibit any signs of an injury while they were working together on December 7th. Moreover, Claimant did not make a documented complaint of a work injury to her supervisors until January 26th or 27th of 2020, approximately one and one-half months after the alleged December 7 incident. As Claimant has had five (5) previous workers' compensation claims during her five (5) years with Respondent-Employer

(including a recent right wrist injury as well as a prior right knee injury and left knee injury), I find that the preponderance of the evidence demonstrates that she was aware of the policies and procedures for reporting a work-related injury.

In the present matter, the diagnostic imaging of Claimant's right knee does not reveal any evidence of an acute injury. In fact, all of the findings from the MRI scans were more degenerative in nature rather than indicative of an injury arising from Claimant's employment on December 7, 2019. Hence, I am unable to find a causal connection between Claimant's right knee symptoms and a work incident on December 7, 2019. To find a causal connection under these facts would require speculation and conjecture. Speculation and conjecture, even if plausible, cannot take the place of proof. Ark. Dep't of Corr. v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

While I recognize that Drs. Reynolds and Lipke opined that Claimant's symptoms were related to a work injury, neither treating physician noted a *specific* work injury. Their opinions were based on Claimant's self-serving reporting, which I find to be incredulous, and therefore, I give little weight to their opinions.

As previously noted, I am cognizant of the long-standing workers' compensation law which states that a temporary aggravation of a pre-existing condition can be a compensable injury. Gansky v. Hi-Tech Eng'g, 325 Ark. 163, 924 S.W.2d 790 (1996). However, for the reasons set forth above, I find that Claimant failed to prove a causal connection between her current complaints with her right knee and her employment activities with Respondent-Employer on December 7, 2019.

Of note, Claimant also gave vague testimony regarding her involvement with Ms. Eason's home improvement business after December 7, 2019. She initially characterized it as one friend helping another. However, Ms. Eason credibly testified that Claimant was participating in heavy

manual labor for the business (including jobs such as, breaking up an old tile floor, mowing yards, cleaning out flower beds, painting, putting down concrete, and building a deck) and that she was paid for her work. Ms. Eason also stated that based on her observations of Claimant's work, she would not characterize her as physically disabled.

Based on the foregoing, I find that Claimant failed to meet her burden of proving that she sustained a compensable injury to her right knee on December 7, 2019. As such, all other issues of medical and indemnity benefits have been rendered moot and are not discussed in this Opinion. Accordingly, this claim for an injury to Claimant's right knee is respectfully denied and dismissed in its entirety.

ORDER

Claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury to her right knee on December 7, 2019, when she felt it pop as she stepped into an ambulance while at work. Therefore, this claim for an injury to Claimant's right knee is hereby respectfully denied and dismissed in its entirety.

IT IS SO ORDERED.

KATIE ANDERSON
ADMINISTRATIVE LAW JUDGE