

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G906168

GAIL TIBBETTS,
EMPLOYEE

CLAIMANT

WESTWOOD PRIMARY SCHOOL,
EMPLOYER

RESPONDENT

ARKANSAS SCHOOL BOARDS ASSOCIATION.,
CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 13, 2023

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

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

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals a decision of the Administrative Law Judge filed on November 15, 2022. The Administrative Law Judge found that, *inter alia*, 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 and that 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. After our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment as provided by Dr. Arnold and additional temporary total disability benefits beginning on September 8, 2020, and continuing to a date yet to be determined.

I. HISTORY

The claimant, now 48 years old, worked for the respondent-employer as a cook. The claimant sustained an admittedly compensable injury to her right knee in a workplace incident on September 13, 2019. The claimant testified that the accident happened in the following manner:

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.

...

Q Okay. So what parts of your body were injured?

A My knees, my elbows hurt, my knees hurt at that point.

Q Okay. And let's talk specifically about your knee because that is why we are here today.

A Yes.

Q Did you feel any sort of pain, pop, any type of sensation in your leg after you had the incident?

A Yes.

Q What was that sensation?

A It was like numbness and weakness and when I walked, it would give out.

Q Now, prior to this incident, had you had any problems with your knees?

A Never.

The claimant was seen at Mercy Clinic on the day of the work accident with the chief complaint of pain to her "L hip, R knee, R elbow".

The claimant returned to Mercy Clinic on September 16, 2019, with the same complaints. At this visit, Dr. Terry Clark noted, "Gail's tertiary

problem is pain located in the right knee. She describes it as aching. The problem began on 9/13/2019. Gail says it seems to be constant. Her pain level is 8.” An x-ray taken of the claimant’s right knee that day showed no radiographic abnormalities. The claimant was diagnosed with sprain of other specified parts of right knee (patellar tendon), taken off work, and prescribed acetaminophen and ibuprofen. Additionally, a right knee MRI was scheduled.

The claimant underwent a right knee MRI on September 17, 2019, which revealed the following:

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 of the knee joint.
2. Small popliteal cyst posteromedially.
3. Thin zone of prepatellar fluid which may be prepatellar bursitis.

The claimant continued to experience right knee pain and returned to Mercy Clinic for a follow-up visit on October 14, 2019. During

this visit, a plan of care was devised that included placing the claimant in a hinged knee brace “3x/week for 3 weeks” and “start[ing] physical therapy as scheduled”.

The claimant underwent six sessions of physical therapy before Dr. Clark determined she had reached maximum medical improvement (hereinafter, “MMI”) on November 4, 2019, and released the claimant to full duty effective November 1, 2019. The claimant was discharged from physical therapy after one additional session.

The claimant returned to see Dr. Clark on November 25, 2019. Dr. Clark noted, “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 seen by Patrick Walton, PA at Mercy Clinic Orthopedics River Valley on December 13, 2019. After examining the claimant, Walton’s impression was “plica syndrome of the right knee”.

Walton noted the following plan:

PLAN: She has never had an injection and I I [sic] think we should fail that first before we discussed [sic] any type of surgical intervention. That is a possibility. Resection of this plica is something that could be considered if she fails the injection. She is happy with getting an injection and not wanting surgery unless it is absolutely necessary. She has been on unrestricted duty. We will continue that. We are

going to get her a brace. She is complaining of some weakness and I think that is probably due to just 3 months of knee pain and some weakness because she has not been able to rehab it well enough because of the pain. The brace I think will help with that. She will continue those exercises. We will see her back in a month to discuss the effects of the injection. Injection of 5 mL of 0.5% Marcaine and 2 mL of betamethasone in the right after her consent was obtained. No x-rays needed with her return.

An x-ray taken during this visit showed “minimal joint space narrowing and minimal degenerative disease. No acute fractures.”

The claimant returned to see PA Walton on January 17, 2020. Walton noted that following the injection the claimant felt like she was probably 90%-95% better. However, she had not tested the knee because she had the flu and was primarily off for three weeks. Walton indicated that “if it flares up again, I think she would be a candidate for a scope to resect her plica.”

At the claimant’s next visit to see PA Walton, he recommended that the claimant “have a formal excision of her plica from the right knee through an arthroscopy”.

On March 18, 2020, Dr. Steven Smith performed a right knee arthroscopy and resection of anteromedial plica. Dr. Smith noted in the

Description of Procedure:

... 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.

...

Dr. Smith released the claimant to regular duty with no restrictions on May 26, 2020, noting, "I believe she is at MMI. She has no permanent impairment."

The claimant exercised her right to a one-time change of physician and began receiving treatment from Dr. Chris Arnold. The claimant's initial visit with Dr. Arnold was on September 8, 2020. Dr. Arnold noted the following impressions:

45 year old female with right knee pain secondary to chondral defect MFC. She had a work injury one year ago. She had a knee scope March 2020 by a doctor in Fort Smith which did not help. Op report reviewed showing grade 3 chondral defect medial femoral condyle. She continues to have right knee pain, swelling, locking which is bothersome with daily activities.

Dr. Arnold diagnosed claimant with right knee chondromalacia and recommended "CSI and MRI to evaluate for chondral defect/flap". Dr. Arnold provided the claimant with a steroid injection and ordered an MRI.

The claimant underwent a right knee MRI on September 18, 2020. The MRI revealed the following:

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.

In his September 22, 2020 office notes, Dr. Arnold noted the following impression:

45-year-old female with right knee pain secondary to lateral meniscus tear and chondral defect/flap mfc.

Dr. Arnold performed an arthroscopy on the claimant on October 23, 2020. Dr. Arnold took the claimant off work until January 1, 2021. The claimant returned to Dr. Arnold on January 25, 2021, for a follow-up visit. During this visit, the claimant continued to complain of right knee pain. Dr. Arnold discussed surgery as a treatment option, noting, “I explained that though I am not recommending a surgical intervention at this time, this may be recommended or necessary in the future to alleviate or treat this condition, especially if conservative measures fail or the condition continues to progress or worsen.”

On September 24, 2021, the claimant underwent a right total knee arthroplasty. Dr. Arnold explained the necessity for this intervention as follows:

Plan: Counseling – Knee DJD

Surgical Options and Alternatives

Total knee replacement: In review of the clinical record and by patient report, the patient has progressively worsening right knee pain and instability that has been recalcitrant to non-surgical treatments. The patient is unable to complete their activities of daily living without functionally limiting pain. The patient has failed observation. They have failed a home exercise program that included quad strengthening/stretching exercises for greater than 12 weeks. They have attempted a course of anti-inflammatory medications consisting of ibuprofen as needed, this has offered short term relief, but the patient's symptoms continue. They have failed rest, corticosteroid injections, and wearing of an unloader brace. Their symptoms are too advanced for arthroscopic treatment. Further options were reviewed with the patient of continued observation vs. further workup, vs. surgical intervention. They wish to proceed with surgical intervention consisting of a right total knee arthroplasty using ROSA robotic system.

The claimant began experiencing stiffness in her right knee secondary to arthrofibrosis. To address the arthrofibrosis, the claimant underwent a right total knee manipulation on December 1, 2021.

Dr. Ethan Schock reviewed the claimant's medical records on behalf of the respondents and provided a report dated August 3, 2022. Dr. Schock opined the following:

[It] 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 a[n] 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, preexisting, and degenerative process.

A Pre-hearing Order was filed on May 25, 2022. The claimant's contentions are as follows:

1. The Claimant, Gail Tibbets [sic], 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 [one] 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 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. [With] regard to the statute [sic] of limitations, Claimant filed a Form C on 2/12/20, seeking only additional medical treatment. The statute

of limitations has run on all other benefits, as the last medical and indemnity were both paid in September of 2020.”

The parties agreed to litigate the following issues:

(1) Whether the 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 the 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.

After a hearing, an Administrative Law Judge filed an opinion on November 15, 2022. The Administrative Law Judge found:

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.

The claimant appeals these findings to the Full Commission.

II. ADJUDICATION

A. Additional Medical Treatment

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

An employee is not required to prove that her compensable injury is the major cause for the need for treatment unless she is seeking permanent benefits; when the employee has suffered a specific injury and is only seeking medical benefits and temporary total disability, the major-cause analysis is not applicable, and the employee need only show that the

compensable injury was a factor in the need for additional medical treatment. *Williams v. L & W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004).

The Full Commission finds that the treatment, including surgical interventions performed by Dr. Arnold, was reasonably necessary. The claimant sustained a compensable right knee injury on September 13, 2019. The claimant testified that she had never experienced pain in her right knee prior to her workplace accident. The claimant received conservative treatment and a right knee arthroscopy and resection of anteromedial plica prior to Dr. Smith's determination that she had reached MMI on May 26, 2020.

After the determination of MMI was reached, the claimant continued to experience pain and chose to change physicians from Dr. Smith to Dr. Arnold. When Dr. Arnold first examined the claimant he noted that the claimant continued to suffer from right knee pain, swelling, and locking and diagnosed her with right knee chondromalacia. Dr. Arnold related the claimant's knee chondromalacia to her work accident, noting, "She had a work injury with a chondral defect medial femoral condyle grade 3." In addition, Dr. Smith noted that the plica (which was treated as part of the claimant's compensable injury) was abrading the medial chondromalacia. Additionally, Dr. Arnold indicates that the claimant's need

for additional treatment was caused by a meniscus tear **and** chondral defect.

We also note that the record is void of evidence of any additional significant accidents or injuries to the claimant's right knee between May 26, 2020 (when Dr. Smith determined she was at MMI) and September 8, 2020 (when she first saw Dr. Arnold). Clearly, the claimant's compensable right knee injury was a factor in the need for additional medical treatment.

We are not unmindful of Dr. Schock's opinion; however, we assess greater weight to the statements of Dr. Arnold who is the claimant's treating physician.

Based on the aforementioned, we find that the treatment provided by Dr. Arnold was reasonably necessary and causally connected to the claimant's September 13, 2019, work injury.

Therefore, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to the reasonable and necessary medical treatment provided in relation to her compensable right knee injury which was provided by Dr. Arnold.

B. Additional Temporary Total Disability Benefits

Ark. Code Ann. §11-9-521 provides that for scheduled injuries, an injured worker is entitled to temporary total benefits during the healing period or until the employee returns to work. It is not necessary for

a claimant with a scheduled injury to prove that she is totally incapacitated from earning wages in order to collect temporary total disability benefits.

Fendley v. Pea Ridge Sch. Dist., 97 Ark. App. 214, 245 S.W.3d 676 (2006).

Rather, she is entitled to temporary total disability benefits during her healing period or until she returns to work, whichever occurs first, regardless of whether she has demonstrated that she is actually incapacitated from earning wages. *Wheeler Const. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

“Healing period” means that period for healing of an injury resulting from an accident. Ark. Code Ann. §11-9-102(12). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *J.A. Riggs Tractor Co. v. Etzkorn*, 30 Ark. App. 200, 785 S.W.2d 51 (1990); *Mad Butcher Inc. v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

The Full Commission finds that the claimant is entitled to additional temporary total disability benefits. In the present matter, the claimant suffered a compensable injury to her right knee. At the August 18, 2022 hearing, the claimant testified that she was not working because she was terminated from her job on September 8, 2020 and because, as she explained, “I am still in a lot of pain. I can hardly walk. I can hardly get up. I can hardly move. I can hardly turn. I can hardly bend.” Additionally, there

is not a medical record from Dr. Arnold within the Commission's record showing that the claimant has reached MMI.

Since the claimant sustained a scheduled injury, remained within her healing period, and has not returned to work, the Full Commission finds that the claimant is entitled to additional temporary total disability beginning on September 8, 2020, and continuing to a date yet to be determined.

C. Statute of Limitations

The statute of limitations for workers' compensation claims is set forth in A.C.A. §11-9-702 (a) as following:

A.C.A. §11-9-702(b) states, in pertinent part:

In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater.

In overruling *Kirk v. Central States Manufacturing*, 2018 Ark. App. 78, the Arkansas Supreme Court held that under a plain reading of Ark. Code Ann. § 11-9-702(b)(1), the statute of limitations on a request for additional workers' compensation benefits commences when the last payment, whether for disability or medical benefits, is made. *Wynne v. Liberty Trailer*, 2022 Ark. 65, 641 S.W.3d 621.

Here, the claimant filed a Form C seeking additional medical expenses on February 13, 2020. The last payment for medical benefits was made on September 22, 2020. The claimant's Form C was clearly filed within one year of the date that the last payment was issued. Therefore, the statute of limitations has not run on the claimant's claim for indemnity benefits as the respondents contend.

III. Conclusion

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to reasonable and necessary medical treatment provided in relation to her compensable right knee injury, which was provided by Dr. Arnold and additional temporary total disability benefits beginning on September 8, 2020, and continuing to a date yet to be determined. The Full Commission further finds that the statute of limitations has not run in this matter. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a) (Repl. 2012). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment provided by Dr. Arnold. I must further dissent from the Majority's findings that the statute of limitations for indemnity benefits was tolled by the February 12, 2020 Form AR-C requesting additional medical benefits and that the claimant is entitled to additional temporary total disability benefits beginning on September 8, 2020 and continuing to a date to be determined.

Our rules provide that the respondent must provide any medical treatment "as may be reasonably necessary in connection with the injury received by the employee." Ark. Code Ann. § 11-9-508(a). The claimant has the burden of proving by a preponderance of the evidence that the additional medical treatment requested was reasonable and necessary.

Amaya v. Newberry's 3N Mill, 102 Ark. App. 119, 282 S.W.3d 269 (2008).

"What constitutes reasonable and necessary treatment under this statute is a question of fact for the Commission to decide." *Id.* The claimant's contention that the respondent carrier is responsible for the surgery and follow-up treatment provided by Dr. Chris Arnold disregards the objective medical findings found in the claimant's September 17, 2019 and September 18, 2020 MRIs. The 2019 MRI, as reported by Dr. Terry Clark, found in relevant part: "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." (Resp. Ex. 1, P. 1). This finding was later confirmed by Dr. Steven Smith, who on March 18, 2020 performed a right knee arthroscopy and resection of anteromedial plica. (Resp. Ex. 1, Pp. 4-6). Dr. Smith's postoperative diagnosis was consistent with the September 2019 MRI—plica syndrome and a superficial grade 3 chondromalacia of medial femoral condyle. *Id.* Dr. Smith's operative report stated that the claimant's "Medial meniscus was normal. ACL and PCL normal. Lateral compartment normal." *Id.* On May 26, 2020, the claimant returned to Dr. Smith complaining of some achiness in her knee, but Dr. Smith opined that "overall her knee looks quite good. I am going to release her to regular duty. I believe she is at MMI. She has no permanent impairment." (Resp. Ex. 1, P. 8).

The claimant later obtained a change of physician order granted by the Commission and began treating with Dr. Chris Arnold on September 8, 2020. Dr. Arnold obtained a second MRI, and when compared with the September 17, 2019 MRI, Dr. William Hocott found a “[t]ear of the lateral meniscus which is a progressive finding from the previous year” and “[d]egenerative changes within the medial meniscus with no definite tear.” (Clt. Ex. 1, P. 116). Pursuant to these findings, Dr. Arnold performed a right knee arthroscopy on the claimant on October 23, 2020 and later a total right knee replacement on September 24, 2021. (See Clt. Ex. 1, Pp. 131, 159-160). However, the findings of the 2020 MRI are in contradiction to the 2019 MRI as well as Dr. Arnold’s surgical findings. The claimant’s adjuster, Misty Thompson, obtained an additional opinion from Dr. Ethan Schock, an orthopedic surgeon, who reviewed the claimant’s records, MRIs, and surgical reports to determine whether in his expert opinion the treatment after Dr. Smith’s MMI date of May 26, 2020 was reasonable and necessary. (See Resp Ex. 1, Pp. 15-17). Dr. Schock’s report references Dr. Arnold’s October 23, 2020 report, not submitted into evidence by either party, stating, “[o]perative 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.” (Resp. Ex. 1, Pp. 16-17). Dr. Schock opines that “the patient’s mechanism of injury, description of symptoms, radiologic studies, and interoperative

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).” *Id.*

It is within the Commission's province to reconcile conflicting evidence, including the medical evidence, and to determine the true facts. *Hernandez v. Wal-Mart Assocs.*, 2009 Ark. App. 531, 337 S.W.3d 531 (2009); *Pyle v. Woodfield, Inc.*, 2009 Ark. App. 251, 306 S.W.3d 455 (2009). Further, the Commission is entitled to review the basis for medical opinions in deciding the weight and credibility of the opinion and medical evidence. *Aegon Ins. United States v. Durham-Gilpatrick*, 2010 Ark. App. 826, 378 S.W.3d 773, (2010). In the present case, it is clear that the weight of the medical evidence proves that the claimant's surgical interventions provided by Dr. Arnold were not reasonably necessary or related to her compensable September 13, 2019 right knee injury. The findings of the September 2019 MRI were unequivocal in showing that there was no lateral or medial meniscus tear. The operative report of Dr. Smith and the operative report of Dr. Arnold, as provided by Dr. Schock, support the fact that the claimant never suffered a meniscus tear of any sort. The 2020 MRI reading provided by Dr. Hocott is an outlier and does not comport with the facts as reasonably interpreted. Dr. Arnold's treatment and two surgeries, including a total knee replacement, were based on an MRI reading by Dr.

Hocott which was clearly in error and not supported by any of the surgical findings.

“In order to be entitled to temporary total disability benefits, a claimant must prove by a preponderance of the evidence that he remained in his healing period and suffered a total incapacity to earn wages.”

Arkansas State Highway & Transp. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). In the present case, the claimant’s healing period ended on May 26, 2020 when released at MMI by Dr. Smith. As any medical treatment after that date was not causally related to her September 2019 injury, she is not entitled to benefits for any disability arising from that treatment.

As a secondary matter, the claim for additional indemnity benefits is barred by the statute of limitations. The claimant submitted a form AR-C on February 12, 2020, requesting only additional medical benefits. The claimant made no written request for additional indemnity benefits until her Response to the Prehearing Questionnaire was filed on April 26, 2022. In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the commission within one (1) year from the date of the last payment of compensation or two (2) years from the date of the injury, whichever is greater. Ark. Code Ann. § 11-9-702(b)(1). A claim for additional compensation must specifically state that it is a claim for

additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation. Ark. Code Ann. § 11-9-702(c). While certain claims may toll the running of the statute of limitations, such claims cannot revive other forms of compensation once the statute has run. *Flores v. Walmart Distribution*, 2012 Ark. App. 201 (2012). The Arkansas Court of Appeals has made it clear that the statute of limitations can run on a claim for additional indemnity benefits and not have run on additional medical benefits. *Id.* Our rules are clear that tolling the statute of limitations for additional medical benefits does not inherently toll the statute with regard to indemnity benefits if additional indemnity benefits are not specifically requested. I believe that the statute of limitations has expired for additional indemnity benefits due to claimant's failure to submit a written request, by way of a Form C or otherwise, for additional indemnity benefits until April of 2022. For this reason, I would find the claimant is not entitled to any additional indemnity benefits resulting from her February 12, 2020 injury.

For the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner