

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H001634

ERICKA WILLIAMS BEELER, Employee	CLAIMANT
CITY OF BENTONVILLE, Employer	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE WCT, Carrier/TPA	RESPONDENT

OPINION FILED JANUARY 18, 2023

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant represented by JASON M. HATFIELD, Attorney, Springdale, Arkansas.

Respondents represented by JARROD S. PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On December 21, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on September 7, 2022 and a pre-hearing order was filed on September 12, 2022. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The prior Opinion of March 31, 2021 is final.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's left knee on February 26, 2020.

2. Claimant's entitlement to medical treatment as recommended by Dr. Dougherty.

3. Lack of notice.

4. Statute of limitations.

5. Whether the claim for claimant's left knee is governed by the Law of the Case Doctrine and whether respondent is in contempt.

6. Attorney's fee.

The claimant's contentions are set forth in her pre-hearing questionnaire which is attached to Commission's Exhibit #1 as Exhibit #1.

The respondents contend claimant did not suffer an injury to her left knee in the course and scope of her employment on February 26, 2020. Claimant did not give notice of any injury to her left knee until July 18, 2022. The statute of limitations has run on any claim that she suffered a left knee injury on February 26, 2020. There is no basis for claimant's assertion that respondents are in contempt of any order or directive from the Commission. Claimant was not claiming entitlement to any benefits associated with her left knee at the March 3, 2021 hearing and she did not mention her knee as being a source of symptoms or problems when discussing the issues and contentions at the pre-hearing conference or hearing. The body part and/or condition that served as the basis for claimant's claim at the hearing was an injury to her left calf and her claimed CRPS.

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 a pre-hearing conference conducted on September 7, 2022 and contained in a pre-hearing order filed September 12, 2022 are hereby accepted as fact.

2. Claimant's claim for her left knee is not governed by the Law of the Case Doctrine and respondent is not in contempt for failing to comply with the prior Opinion filed March 31, 2021.

3. Claimant's claim for a compensable injury to her left knee is not barred by the Statute of Limitations.

4. Claimant did not fail to give notice of her injury pursuant to A.C.A. §11-9-701.

5. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on February 26, 2020.

6. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left knee injury. This includes surgery performed by Dr. Dougherty.

FACTUAL BACKGROUND

Claimant is a 37-year-old woman who began working for respondent as a Patrol Officer I on February 15, 2017 before being promoted to Patrol Officer II. Her job duties included responding to emergency calls which included domestic violence, child abuse, arrests, DWIs, and first responder duties at times.

She is certified as a Women's Self-Defense Instructor and was teaching a class

at the Bentonville Police Department on February 26, 2020. She was demonstrating a move when one of the other instructors landed on her left leg, resulting in an injury to the leg. After some initial medical treatment claimant came under the care of Dr. Heim, who diagnosed claimant's condition as traumatic hematoma that was not resolving. He performed a surgical procedure to drain the hematoma on March 19, 2020.

During a follow-up visit on April 1, 2020, Dr. Heim noted that claimant was having difficulty putting pressure on her left foot because of pain. Dr. Heim believed that claimant's symptom were consistent with complex regional pain syndrome ("CRPS") and he ordered physical therapy.

On May 13, 2020, claimant received a change of physician to Dr. Dougherty and he diagnosed claimant's condition as CRPS of the lower limb which he attributed to her work injury. When physical therapy did not improve claimant's condition, Dr. Dougherty referred claimant to Dr. Deimel for nerve blocks. Dr. Deimel performed nerve blocks and indicated that claimant would be a candidate for a spinal cord stimulation trial. He referred claimant to the Mayo Clinic for treatment and Dr. Dougherty also referred claimant to the Mayo Clinic.

Physicians at the Mayo Clinic determined that claimant was a candidate for a trial stimulator which was successful and a permanent implantation was recommended. At that point respondent denied liability for the continued treatment of CRPS and the permanent implantation of a stimulator.

A hearing was conducted on March 3, 2021 on the issue of claimant's entitlement to additional medical treatment as recommended by Dr. Dougherty and the physicians at the Mayo Clinic. In an opinion filed March 31, 2021, this Administrative Law Judge found

that claimant had met her burden of proving by a preponderance of the evidence that she was entitled to the recommended treatment, including treatment for RSD/CRPS. That opinion was not appealed and the parties have stipulated that it is final.

Since the time of the prior hearing claimant has undergone a procedure for permanent implantation of the stimulator. With respect to her RSD/CRPS, Dr. Deimel opined that claimant had reached maximum medical improvement as of March 16, 2022. Claimant underwent a functional capacities evaluation on March 29, 2022, which found 50 of 50 consistency measures within expected limits and determined that claimant could perform work in the medium classification of work. Claimant is currently working at home for Tyson Corporate.

Claimant testified that prior to her release at maximum medical improvement by Dr. Deimel she limited her physical activity based on the physicians' recommendations.

They just continued to monitor my left - - you know, my left leg from my knee to my toes and monitor it until my scar tissue set in for the battery and the leads, so I was under strict requirements of what I could or could not do for an entire year.

Claimant testified that after her release by Dr. Deimel she tried to do more walking which included walking around her neighborhood. After walking about three days she started having increased pain in her left leg, including her left knee. Claimant stated that after waking up one morning she could not put her foot on the ground because of knee pain and she made an appointment to see Dr. Dougherty. He indicated that her condition was consistent with a possible medial collateral ligament sprain of the left knee and ordered an MRI scan.

According to Dr. Dougherty's report of July 18, 2022, the MRI scan revealed an ACL tear of the left knee which he attributed to her original injury. He performed surgery on claimant's left knee on July 26, 2022, with a post-operative diagnosis of "ACL tear, left knee with prior tear tear to PCL and non-functional ligament." Following surgery claimant has undergone physical therapy.

Respondent did not accept liability for the knee surgery performed by Dr. Dougherty. Claimant has filed this claim contending that she suffered a compensable injury to her left knee on February 26, 2020. She requests payment of medical treatment received for that injury.

ADJUDICATION

Initially, claimant contends that this claim is governed by the Law of the Case Doctrine. At the time of the last hearing the parties had stipulated that claimant suffered a compensable injury to her left lower extremity. This stipulation was accepted as fact in the March 31, 2021 Opinion. In addition, Finding of Fact and Conclusion of Law Number 2 from that Opinion states:

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury as recommended by Dr. Dougherty and her physicians at the Mayo Clinic. This includes recommended treatment for RSD/CRPS.

Claimant contends that this stipulation and finding are the law of the case and respondent is precluded from denying compensability for claimant's left knee. The Law

of the Case Doctrine provides that it is conclusive of every question of law and fact decided previously and also those that could have been raised and decided. *Turner v. NW Ark Neurosurgery*, 91 Ark. App. 209, 210 S.W. 3d 126 (2005). The Law of the Case is also similar to the doctrine of collateral estoppel which bars re-litigation of issues of law or fact previously litigated. The elements of collateral estoppel are (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) it must have been determined by a valid and final judgement; (4) the determination must have been essential to the judgement. *Johnson v. Union Pac. R.R.*, 352 Ark. 534, 104 S.W. 3d 745 (2003).

Finally, I note that a stipulation is an agreement between the attorneys representing the conduct of legal proceedings. *Dinwiddie v. Syler*, 230 Ark. 405, 323 S.W. 2d 548 (1959).

Respondent did previously stipulate to a compensable injury to the left lower extremity. However, the parties' stipulation was generic in nature and did not specify whether it included the claimant's left knee. At the time of the original hearing, there was no issue regarding the claimant's left knee. Although claimant's left knee had been mentioned in some of the medical reports, the issue at the time of the last hearing was claimant's entitlement to additional medical treatment for her RSD/CRPS. Accordingly, I do not find that the stipulation of a compensable injury to claimant's left lower extremity constituted an acceptance by respondent of any and all conditions relating to the claimant's leg. Significantly, I note that the requirements for collateral estoppel require that the determination have been essential to the judgement. Here, there was no contemplation by any of the parties at the time of the original hearing that there were any

issues regarding claimant's knee at that time. To find otherwise would be unjust under the circumstances presented in this case.

I also find that claimant's claim for a compensable injury to her left knee is not barred by the Statute of Limitations. Since the respondent had previously accepted and paid compensation benefits for claimant's left lower extremity injury, her claim for a left knee injury is a claim for additional compensation benefits. Pursuant to A.C.A. §11-9-702(b)(1), when compensation has been paid a claim for additional compensation is barred unless filed with the Commission within one year from the date of last payment of compensation or two years from the date of injury, whichever is greater. In this case, claimant submitted into evidence payment records from respondent showing that the last payment of compensation as of September 12, 2022 was a payment for disability benefits to claimant through August 12, 2022. Obviously, it has not been one year since the date of last payment of compensation. Therefore, claimant's claim for additional compensation benefits is not barred by the Statute of Limitations.

Respondent has also raised the issue of notice as a defense to this claim. Notice of the reporting of injuries is codified at A.C.A. §11-9-701. Subsection (a)(1) states that an employee shall report the injury to the employer on a form prescribed or approved by the Commission and to a person or at a place specified by the employer and that the employer is not responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury. Here, respondent was aware of the injury to claimant's left lower extremity. In fact, respondent was aware of the injury on the day it occurred and it accepted claimant's injury as compensable and began paying benefits for the injury to her left lower extremity immediately thereafter. Accordingly, I find that the provisions of

A.C.A. §11-9-701 are not applicable to this claim.

Turning to the primary issue in this case, claimant contends that she suffered a compensable injury to her left knee as a result of the accident which occurred on February 26, 2020. Claimant's claim is for a specific injury identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

First, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment with respondent and that the injury was caused by a specific incident identifiable by time and place of occurrence. Claimant began making complaints of left knee pain almost immediately after the February 26, 2020 injury. In a note dated March 18, 2020, Dr. Heim noted that claimant had indicated that her left knee had begun to hurt. He also stated:

After that [draining of hematoma] we can start range of motion of the knee and ankle start weightbearing and get her back to her normal activity level.

Thereafter, on April 1, 2020, Dr. Heim stated:

I am more concerned about the fact that she has symptoms of significant pain in the medial joint line of the left knee and that she has an autonomic change in the left lower extremity consistent with probably early regional pain syndrome.

We will have to evaluate her knee again following this treatment as it would appear at this time she may possibly have a medial meniscus tear which was masked by her being on crutches for the last several weeks.

Thereafter, claimant came under the care of Dr. Dougherty who also believed that claimant might suffer from a medial meniscus tear and he ordered an MRI scan. The MRI scan was read by the radiologist as showing no findings of a meniscal tear, but did show a thinning of the proximal ACL and mild chondromalacia of the medial femoral tibial compartment.

When claimant returned to Dr. Dougherty on June 10, 2020, he indicated that claimant's MRI scan revealed plica syndrome. Dr. Dougherty indicated that he believed that claimant's plica was related to her work-related injury.

I do believe the plica and her CRPS are due to her work related injury at greater than 51%.

Thereafter, claimant underwent physical therapy which included physical therapy for her left knee. In fact, the physical therapist report of July 7, 2020 indicates that claimant's signs and symptoms were consistent with left medial knee pain.

Claimant subsequently underwent a cortisone injection in her left knee by Dr. Dougherty on August 12, 2020. All of this medical treatment was accepted and paid for by the respondent.

At that point in time the focus primarily became claimant's treatment for RSD/CRPS, a trial stimulator, and eventually the permanent implantation of a stimulator. As claimant testified, she was under strict requirements for what she could do activity wise for approximately one year.

It was not until after claimant was released by Dr. Deimel and given permission to increase her activity that she began walking and immediately developed additional pain in her left knee resulting in her seeking additional medical treatment from Dr. Dougherty. In his report of June 27, 2022, Dr. Dougherty stated:

Just got released from the spinal cord stimulator operated 3/27/22. She reports she started to work out again and immediately the knee started aggravating her again.

She was seen today for recurrent left knee pain. She reports that she has not been doing any physical activity due to the spinal stimulator that was placed in 2021. She recently got released and began to feel discomfort again when walking. The x-rays today showed joint space well maintained soft tissue unremarkable. After the exam, her pain was consistent with a possible medial collateral ligament sprain of the left knee. She will be sent for an MRI of the left knee and follow up if the pain persists.

Most significantly in Dr. Dougherty's report of June 27, 2022, he stated that claimant's continued left knee problems were related to her original injury.

Her injury is directly related to her old injury as she was lax in her knee back on her early exams yet we were dealing with the CRPS and could tolerated [sic] anything for the knee. I will see her back after the MRI.

Claimant underwent the MRI scan on July 1, 2022, and returned to Dr. Dougherty on July 18, 2022. Dr. Dougherty indicated that claimant's MRI scan showed an ACL tear which in his opinion was related to the claimant's original injury.

Her ACL is non functioning and the tear is related to her original left knee injury.

Dr. Dougherty went on to recommend a left knee arthroscopic procedure with ACL construction which he performed on July 26, 2022.

Dr. Dougherty again addressed the relationship between claimant's current knee complaints and her original injury in an undated letter which has been submitted as Page 1 of Claimant's Exhibit 4. That letter states in pertinent part:

The patient was placed under my care for a lower leg injury. She suffered a fat fracture of the leg and had developed chronic regional pain syndrome due to this. At her initial visit, she was diagnosed with a knee injury at the same time as her CRPS. Her initial MRI on 6/4/20 was significant for thinning of the proximal ACL and her exam was consistent with the same as an MCL tear. Due to her pain in the leg no surgical intervention could be offered at that time. She continued to complain of pain and instability in the knee and after the stimulator continued instability in the knee. The subsequent MRI 7/1/22 demonstrated a small caliber ACL consistent with prior tear which was evidenced by the thinning on the original study. She subsequently underwent Anterior Cruciate Ligament Reconstruction due to This instability. It is my opinion based upon the facts presented in the chart, that this is directly related to the original injury, as evidenced on MRI and clinical exam. (Emphasis added.)

In response to Dr. Dougherty's opinion, respondent had claimant's MRI scans evaluated by Justin H. Long, a radiologist. Dr. Long authored a report dated November

28, 2022 in which he basically opined that the MRI scan from June 4, 2020 showed an intact ACL with no findings present to indicate an ACL injury. Given the fact that the most recent MRI scan does show a torn ACL, respondent contends that the recent findings cannot be related to the original compensable injury. Dr. Dougherty addressed this issue in a subsequent report dated December 5, 2022:

I am in receipt of the MRI interpretation from the outside radiologist, and I am in complete agreement with the interpretation. The difficulty lies in that there is a larger percentage of error in MRI and the radiologist, without the benefit of the clinical exam, is not able to assess the function of the ligament, but rather only the appearance of the ligament at the time of the study. A review of the literature reveals a large number of papers documenting the MRI vs surgical findings. This month alone I performed two separate surgeries where the MRI stated the ACL is normal and taught [sic] and yet clinically they are unstable and at the time of the surgery, the ACL is completely torn or the patient has a Type 1 tear. In this tear subtype the MRI looks intact but is actually detached from the femoral insertion. This is the subtype tear the patient in question had and the instability she experienced is the reason for the reconstruction.

In short, I find that the opinion of Dr. Dougherty is entitled to greater weight than the opinion of Dr. Long. Dr. Dougherty is a specialist who evaluated the claimant shortly after her compensable injury and he also performed the surgery. It is his opinion that this condition existed from the time of claimant's original injury based not only upon the MRI findings but upon his clinical examination as well. With respect to this issue, I likewise note that Dr. Heim in 2020 was of the opinion that claimant had a tear in her left knee. Based on the foregoing, I find that the opinion of Dr. Dougherty is entitled to greater weight

than the opinion of Dr. Long.

Based upon the opinion of Dr. Dougherty that claimant's current left knee problems are related to the original injury of February 26, 2020, as well as the remaining evidence previously discussed, I find that claimant has met her burden of proving by a preponderance of the evidence that her injury to the left knee arose out of and in the course of her employment with respondent and that it was caused by a specific incident identifiable by time and place of occurrence.

I likewise find that claimant has proven that her injury caused internal physical harm to her body which required medical services and that she has offered medical evidence supported by objective findings establishing an injury. In addition, based upon claimant's compensable injury she underwent surgery to repair a torn ACL by Dr. Dougherty. Clearly, this is internal harm to the body that required medical services and it is medical evidence supported by objective findings establishing an injury.

In summary, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on February 26, 2020. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable left knee injury. This includes the surgery which has been performed by Dr. Dougherty.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her left knee on February 26, 2020. Respondent is liable for payment of all reasonable and necessary medical treatment provided in

connection with claimant's compensable injury.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$564.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAWJUDGE