

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H101364

ELIJAH EMERSON, Employee	CLAIMANT
NEWTON CO. SHERIFF'S DEPARTMENT, Employer	RESPONDENT
ASSOCIATION OF ARKANSAS COUNTIES WCT, Carrier	RESPONDENT

OPINION FILED MARCH 16, 2022

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

Claimant represented by JASON L. WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by ZACH RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 16, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 19, 2022 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to his right knee on January 20, 2021.

4. The claimant was earning sufficient wages to entitle him to compensation at the weekly rates of \$324.00 for total disability benefits and \$243.00 for permanent partial disability benefits.

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

1. Claimant's entitlement to surgery as recommended by Dr. Arnold.

The claimant contends that his authorized treating physician, Dr. Chris Arnold, has recommended additional right knee surgery that the respondents have denied. Claimant contends that the proposed surgery is both reasonable and necessary. The claimant will re-enter a hearing period post-operatively and will require temporary total disability.

The respondents contend that claimant injured his right knee at work on January 20, 2021 and all appropriate benefits were paid including a surgery by Dr. Justin Cutler. He was released and did return to work. Claimant requested a change of physician to Dr. Arnold who looked at the same MRI used by Dr. Cutler and suggested that he saw something that represented a chondral defect. Neither MRI shows a chondral defect and the surgery is not reasonable or necessary.

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 his 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 January 19, 2022 and contained in a pre-hearing order filed that same date are hereby

accepted as fact.

2. Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment in the form of surgery as recommended by Dr. Arnold.

FACTUAL BACKGROUND

The claimant is a 23-year-old high school graduate with some college credit. He began working for the respondent in early 2018 as a correctional officer.

The parties have stipulated that claimant suffered a compensable injury to his right knee on January 20, 2021. On that date, the claimant became involved in an altercation with an inmate which resulted in his compensable injury. Claimant was initially sent for medical treatment at the North Arkansas Regional Medical Center in Harrison and was referred to Dr. Cutler, an orthopedic surgeon. Dr. Cutler ordered an MRI scan which did not show a contusion of claimant's patella or lateral femoral condyle that would be expected in a patellar dislocation. He also noted that claimant's cartilage appeared to be intact and no loose bodies were seen. He recommended that claimant undergo physical therapy and use a patellar knee brace.

When claimant's condition did not improve, Dr. Cutler recommended an arthroscopic procedure which he performed on April 5, 2021. Medical records from Dr. Cutler subsequent to that date indicate that claimant continued to complain of right knee pain. Following his surgery the claimant also underwent an extensive period of physical therapy. The physical therapist notes indicate that claimant continued to complain of pain in his right knee. On June 29, 2021, Dr. Cutler gave claimant an injection in his right

knee.

When claimant's condition did not improve, Dr. Cutler ordered a second MRI scan which was performed on August 16, 2021. That scan was interpreted as showing intact cruciate ligaments with no acute findings and a small volume joint effusion. Because of claimant's continued complaints of pain, Dr. Cutler referred claimant to Dr. Deimel for a second opinion and treatment of nerve pain versus functional pain.

Claimant testified that he was willing to be evaluated by Dr. Deimel, but also wanted to seek a second opinion from an orthopedic surgeon. As a result, he filed for and received a change of physician to Dr. Chris Arnold. Claimant was evaluated by Dr. Arnold on September 28, 2021. Dr. Arnold reviewed claimant's MRI scan and opined that claimant had a chondral defect of the patella. He recommended a surgical procedure which was denied by the respondent.

Claimant has filed this claim contending that he is entitled to additional medical treatment in the form of surgery as recommended by Dr. Arnold.

ADJUDICATION

Claimant contends that he is entitled to additional medical treatment in the form of surgery as recommended by Dr. Arnold. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable right knee injury. *Dalton v. Allen Engineering Co.*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met his burden of proof.

Initially, it should be noted that claimant had a prior history of problems involving

both of his knees. In fact, claimant had undergone four surgeries on his left knee beginning at the age of 12. With respect to his right knee, claimant had undergone surgery approximately five years ago for an injury resulting from playing high school football. However, claimant had not received any medical treatment for his right knee since the time of that surgery and, more importantly, the parties have stipulated that claimant suffered a compensable injury to his right knee on January 20, 2021. Accordingly, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with that compensable right knee injury.

As previously noted, claimant filed for and received a change of physician to Dr. Chris Arnold. Dr. Arnold in his report of September 28, 2021 recommended an arthroscopic procedure of the claimant's right knee. It was Dr. Arnold's opinion that claimant had a chondral defect of the patella as evidenced by his review of claimant's MRI scan. I find that the opinion of Dr. Arnold is credible and entitled to great weight.

Claimant's primary treating physician has been Dr. Cutler who performed surgery on April 5, 2021. Despite that surgical procedure, claimant continued to have right knee pain as reflected in Dr. Cutler's notes and in the physical therapist notes. Dr. Cutler never opined that claimant had reached maximum medical improvement and never released claimant from his care. Instead, Dr. Cutler believed claimant might have a nerve condition and as a result referred him to Dr. Deimel for a second opinion. Before claimant was seen by Dr. Deimel he was evaluated by Dr. Chris Arnold. Significantly, Dr. Cutler was of the opinion that claimant was in need of additional evaluation and treatment. In this particular case, that additional evaluation and treatment was from Dr. Arnold.

In reaching this decision, I note that Dr. Arnold's medical report of September 28,

2021 does contain language that he is not recommending surgical intervention at this time. However, it appears that this is some type of standard language included in Dr. Arnold's reports and is not specific to this particular claimant since Dr. Arnold clearly recommends surgery. Specifically, Dr. Arnold stated:

Plan: Order Surgery: Knee Arthroscopy.

Furthermore, the medical records also contain a note indicating that claimant's surgery for October 29, 2021 was canceled due to no workers' compensation approval. Thus, it is clear from a totality of the evidence that Dr. Arnold was recommending an arthroscopic procedure for the claimant's right knee injury.

Accordingly, based on the foregoing evidence, I find that claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment as recommended by Dr. Arnold.

AWARD

Claimant has met his burden of proving by a preponderance of the evidence that he is entitled to additional medical treatment in the form of surgery as recommended by Dr. Arnold.

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).

Respondents are responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$383.40.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE