

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H105875

PRISMA OCAMPO LOPEZ, Employee	CLAIMANT
AMERICAN AIR FILTER CO., Employer	RESPONDENT
SENTRY INSURANCE COMPANY, Carrier	RESPONDENT

OPINION FILED MARCH 10, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

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

STATEMENT OF THE CASE

On December 14, 2022, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 10, 2021, and an Amended Pre-hearing Order was filed on November 12, 2021. A copy of the Amended Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on March 10, 2021.
3. The claimant sustained a compensable injury to her right knee on March 10, 2021.

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

1. Whether the claimant is entitled to additional medical treatment in the form of surgical intervention of the right knee as recommended by Dr. Robert Macleod.

Claimant's contentions are:

“Claimant contends she is entitled to surgery on her right knee as recommended by Dr. Macleod. The claimant reserves all other issues.”

Respondents’ contentions are:

“Respondents are denying Claimant’s right knee surgery as not being reasonable and necessary for her compensable injury in light of the lack of acute objective findings post-date of injury.”

The claimant in this matter is a 54-year-old female who suffered a compensable right knee injury on March 10, 2021. The claimant worked in the respondent’s packing department. At the hearing the claimant gave direct examination testimony about the incident, her reporting of the incident, and the events that took place shortly following the incident as follows:

Q And what happened that day?

A That day I was putting the labels and there was a roll that was - - it was fiber, glass fiber that was going through the trash.

Q And what happened?

A They had assigned someone to be watching the trash so it wouldn’t come into the area. I was packaging with Mr. Fidel. That roll came over into the area where we were working. The big roll came over towards me. My legs got tangled up and it knocked me over on both knees and both hands. I fell on the pavement.

Q Okay. And by pavement, what kind of material was that?

A It was concrete.

Q Okay. And what happened after you fell?

A Mr. Fidel wanted to help me, but Mr. Fidel didn’t want to help me because they were going to think that he had knocked me over.

Q Did someone come help you?

A Yes. Yes. Jesus Salazar and Cliff Farmer.

Q Okay. And was he the supervisor?

A Yes.

Q And did you fill out paperwork about the incident?

A Yes.

Q Did you fill this out or did someone help you?

A Cliff did it.

Q Okay. And did you continue working?

A I waited about a half an hour and yes.

Q When you started working again, what was bothering you on your body?

A In the four extremities, but I was more worried about my right knee.

Q And why were you more worried about the right knee?

A Because they had just done a surgery.

Q They had just done it, just recently?

A Well, you could say it happened - - it was done like the year before last, maybe April.

Q So was a supervisor at AAF aware that you had had a left knee surgery in the past? I'm sorry, a right knee surgery.

A Yes, they knew.

The claimant in this matter has asked the Commission to determine if she is entitled to additional medical treatment in the form of surgical intervention regarding her right knee as recommended by Dr. Macleod. It is without doubt that the claimant during her deposition in this matter was less than forthright with the respondent about prior issues with her right knee. However, it is also clear that from the first medical record one day after the claimant sustained a compensable right knee injury that medical providers to whom she was sent at the request of respondent knew that the claimant had been through two right knee surgeries prior to her compensable right knee injury on March 10, 2021.

On March 11, 2021 the claimant was seen by PA Daniel Nicholas. The medical report from that visit indicates that the claimant had “two previous surgeries to her right knee.” The claimant complained of pain and was instructed to “use ice to reduce swelling.” On March 18, 2021 the claimant was again seen by PA Nicholas. The claimant continued to complain of right knee pain. The pain was considered variable depending upon her activity level. The claimant “feels it is not improving.” Following is a portion of that medical report:

DIAGNOSIS

1. Sprain of unspecified site of right knee, subsequent encounter
2. Strain of unspecified muscles, fascia and tendons at thigh level, right thigh, initial encounter

ASSESSMENT

Number and Complexity of Problems Addressed:
1 acute, uncomplicated illness or injury.

MEDICAL DECISION MAKING

Independent Historian: Interpreter.

TREATMENT PLAN

She will continue ice and anti-inflammatories.

**DECISION TO USE OVER THE COUNTER
MEDICATION**

Use of non-prescription drugs preferred over prescription medicine due to increased risk of morbidity and potential side-effects.

MEDICAL CAUSATION

The cause of this problem appears to be related to work activities.

RECOMMENDED WORK STATUS

Prisma’s recommended work status is Regular Duty. Return to work plan discussed with patient and communicated with patient and communicated to the employer.

RECOMMENDED ACTIVITY RESTRICTIONS

General: None.

The claimant was to follow up in two weeks.

On April 16, 2021 the claimant was again seen by PA Nicholas. The claimant continued to complain of right knee pain due to her compensable right knee injury. The claimant was again diagnosed with a sprain of the right knee by PA Nicholas, who at that time recommended an MRI of the claimant's right knee.

On May 3, 2021, the claimant underwent an MRI of the right knee without contrast. Following is a portion of the report from that diagnostic test authored by Dr. Benjamin Lowery:

IMPRESSION:

1. Complex tear involving the posterior horn and body of the medial meniscus.
2. Chondromalacia involving the medial compartment and patellofemoral compartment.
3. Small joint effusion.

On May 5, 2021 the claimant is again see by PA Nicholas. The claimant continued to complain about right knee symptoms including pain at that time. Following is a portion of the medical record from that report:

IMAGING STUDIES

MRI – Right Knee: Complex tear of medial meniscus.

DIAGNOSIS

1. Sprain of unspecified site of right knee, subsequent encounter

ASSESSMENT

She has damage to the meniscus. She has had surgery on this same location before. The only records available are an operative report in 2015.
Number and Complexity of Problems Addressed: 1 acute complicated injury.

MEDICAL DECISION MAKING

Independent Historian: Interpreter.

TREATMENT PLAN

She will see ortho for this problem.

DECISION TO USE OVER THE COUNTER MEDICATION

Use of non-prescription drugs preferred over prescription medication due to increased risk of morbidity and potential side effects.

CONSULTATION/REFERRAL REQUEST

Referral to orthopaedics.

MEDICAL CAUSATION

Previous injury exacerbated.

RECOMMENDED WORK STATUS

Prisma's recommended work status is Regular Duty. Return to work plan discussed with patient and communicated to the employer.

On May 11, 2021 the claimant was seen by Dr. Robert Macleod as a result of a referral by PA Nicholas. Following is a portion of that medical record:

HPI

53-year-old female presents for initial evaluation of bilateral knee pain right greater than left stemming from a work injury that occurred when she fell just over a month ago. She is seen at her Worker's Comp. clinic had x-rays and eventually an MRI which demonstrated a meniscus tear. He [sic] has been doing physical therapy for about a month on that right knee which has been the focus. However the left knee also bothers her she notices swelling pain on the inner aspect of the left knee that is just not getting better with physical therapy activity modification and anti-inflammatories. She is referred in for further evaluation and treatment.

Assessment/Plan

53-year-old female with work injury to her right and left knee. MRI findings as above she is been doing physical therapy activity modification anti-inflammatories home exercises bracing the knee is persistently symptomatic. I believe is reasonable proceed with right knee diagnostic and operative arthroscopy with partial medial meniscectomy. She notes a history of a prior meniscectomy 2 to 3 years ago with full recovery no issues in the knee until the current fall. On the left knee there is findings consistent with Baker's cyst and likely meniscal injury as well. Like to get an MRI of the left knee in addition to this to evaluate for meniscal injury. Had an at length discussion with she and her daughter about timing of surgery should she have left knee meniscal tear as well she preferred to do this bilaterally Rather than in a staged setting. We will get her set up with a left knee MRI get her back to discuss results in the meantime she can be

full duty with braces as necessary.

1. Pain in left knee
M25.562: Pain in left knee
 - KNEE 4 VIEWS
 - RADIOLOGIST REFERRAL – Schedule Within: provider’s discretion Note to Provider: MRI LEFT KNEE WITHOUT CONTRAST
Reason for Referral: MRI LEFT KNEE WITHOUT CONTRAST

2. Tear of medial meniscus of knee – Right
S83.241A: Other tear of medial meniscus, current injury, right knee, initial encounter
 - KNEE ARTHROSCOPY WITH MEDIAL MENISCECTOMY (SURG) – Note to Provider: RIGHT KNEE DIAGNOSTIC AND OPERATIVE ARTHROSCOPY, PARTIAL MEDIAL MEISCECTOMY AND ANY OTHER INDICATED PROCEDURES

On May 18, 2021, the claimant was again seen by Dr. Macleod. Following is a portion of that medical record:

HPI

53-year-old female presents for follow-up evaluation of her knee. She sustained a meniscal tear in the right knee and there is concern for similar injury stemming from a work injury several weeks ago in which she is having mechanical symptoms of both knees. She is here to go over the MRI results and states that both of her knees continue to bother her right greater than left with a clicking catching sensation particular with bending and twisting motions.

Assessment/Plan

53-year-old female with bilateral medial meniscus tear stemming from a work injury. We discussed the findings with she and her daughter injury occurred few months ago she has not responded to conservative treatment options I think is reasonable proceed with bilateral knee arthroscopy with partial medial meniscectomies bilaterally. She needs to keep the same work restrictions until surgery we will plan to see her back 2 weeks postoperatively.

On May 19, 2021, the respondent sent a letter to Dr. Macleod concerning his recommended treatment for the claimant. That record is found at Claimant's Exhibit 1, Pages 15 and 16. In that letter, two questions were specifically asked of Dr. Macleod about the claimant's treatment for her compensable right knee injury. Dr. Macleod answered those questions by written note on the letter sent to him. Following is my best interpretation of his response given the difficulty of his handwritten responses:

- 1) What is your current diagnosis?

Bilateral meniscal tears (medial), chondromalacia

- 2) Can you state with a reasonable degree of medical probability that Ms. Ocampo current condition and need for meniscus tear to the right and left knee are a direct result of the exposure at Daikin Holding when she fell? If so please explain.

Yes. She presented to my office complaining of Bil knee pain right >left. She had MRI done on right already as this was primary complaint. Asked for work comp approval for L knee pain and exam consistent with [illegible] meniscal tear. MRI ordered and confirmed meniscus tear. She and daughter explain occasionally patient has knee discomfort on both knees but never significant pain and clicking sensation. Does have underlying chondromalacia on MRI but believe symptoms to be attributed to the injury at work.

On October 5, 2021 Dr. Carey Guidry of Radiology Consultants authored a letter/report to the respondent's attorney. Dr. Guidry acknowledged in his letter/report that he had "as requested, I have reviewed Ms. Prisma Ocampo's right knee MRI dated 5/3/2021 and left knee MRI dated 5/17/2021. I am aware that the patient has had prior right knee surgeries. Below are my findings and professional opinion as it relates to her reported fall on 3/10/2021." It appears that Dr. Guidry had no contact with the claimant except for the two MRIs noted in his letter/report. Certainly, it does not appear that he ever examined the claimant. Dr. Guidry gave his opinion regarding the claimant as follows:

In my professional opinion, there are no acute, objective MRI findings in either knee that could be attributed to the patient's reported fall on 3/10/2021. Appearance of the right knee posterior horn medial meniscus can be attributed

to either prior surgery and/or chronic degenerative tear given the background degenerative findings.

The question before the Commission is the claimant's entitlement to additional medical treatment for her compensable right knee injury of March 10, 2021. The claimant complained to medical providers as early as one day post-compensable right knee injury about symptoms in her right knee. The claimant was, if not untruthful about previous right knee difficulties including two surgical interventions, certainly not forthright regarding her prior right knee problems at the time of her deposition. However, it is clear from the first medical record one day after her injury that medical providers had knowledge of her prior knee surgeries.

In review of the medical treatment provided to the claimant, particularly the treatment provided by PA Nicholas and Dr. Macleod, I do believe the surgical intervention recommended by Dr. Macleod is reasonable and necessary medical treatment for the claimant's compensable right knee injury. I have considered the report of Dr. Guidry, but find it less compelling as it appears he simply reviewed MRIs and never actually examined the claimant or had an explanation from the claimant or from some first party source about her March 10, 2021 right knee injury. Also, Dr. Guidry stated, "Appearance of a right knee posterior horn medial meniscus can be attributed to either prior surgery and/or chronic degenerative tear given the background degenerative findings." Dr. Guidry's opinion of "can" gives much room for my finding that the claimant's current need for surgical repair of the claimant's right meniscus is due to her compensable March 10, 2021 right knee injury.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on November 10, 2021, and contained in an Amended Pre-hearing Order filed November 12, 2021 are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment in the form of surgical intervention of the right knee as recommended by Dr. Macleod.

ORDER

The respondents shall be responsible for the costs associated with the surgical intervention recommended by Dr. Macleod concerning the claimant's right knee and its aftercare.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE