

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H000250

DARRYL G. PAYNE,
EMPLOYEE

CLAIMANT

PHILLIPS COMMUNITY COLLEGE,
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 28, 2024

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

Claimant appeared *pro se*.

Respondents represented by the HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part, affirmed in part.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed November 14, 2023. The administrative law judge found that the claimant failed to prove he was entitled to additional medical treatment. After reviewing the entire record *de novo*, the Full Commission finds that additional medical treatment to be provided to the claimant by Dr. Busby is reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012).

I. HISTORY

The testimony of Darryl Payne, now age 55, indicated that he became employed with the respondents, Phillips Community College, in about January 2019. Mr. Payne testified that he had been employed as a custodian for the respondents. The parties stipulated that the employee-employer relationship existed on January 7, 2020. The claimant testified on direct examination:

Q. You got hurt on January the 7th of 2020?

A. Yes.

Q. Tell the judge what happened.

A. I was asked to get rid of some computer monitors that was out in the hallway.

Q. These were in boxes, right?

A. No, I was putting them in the boxes....They was pretty much in the way of the doorway of the students going in, so it was probably maybe a hundred monitors....I came down the steps with the box in front of me and that's when the accident happened....

Q. You fell?

A. Yes.

Q. And you injured –

A. My left ribs, quads, tender loin, patella rupture or something like that.

The parties stipulated that the claimant “sustained a compensable work-related injury to his left leg” on January 7, 2020. According to the record, an x-ray of the claimant’s left knee was taken on January 7, 2020:

INDICATION: Left knee pain with Trauma/injury....

FINDINGS: No acute fracture or dislocation is appreciated. No significant suprapatellar bursal effusion is identified. Soft tissue irregularity along the medial aspect of the anterior lower leg noted.

IMPRESSION: No acute fracture or dislocation is appreciated. No significant suprapatellar bursal effusion is

identified. Soft tissue irregularity along the medial aspect of the anterior lower leg noted.

The claimant's testimony indicated that he underwent surgery by Dr. Phillip A. Smith on February 13, 2020. An MR of the claimant's lower extremity was taken on July 21, 2020 with the impression, "Prior surgical repair of the quadriceps tendon which appears intact. Focal area of chondromalacia involving the medial facet of the patella." Dr. Smith planned on or about November 10, 2020, "He has met MMI. He can return to work based on the medium work classifications. We are going to get him a knee brace today. He will follow-up as needed. I told him he needed to continue to focus on quad strengthening. He also needs to focus on low impact exercise and weight loss."

Dr. Smith reported on November 29, 2020:

Darryl Payne underwent a left quad tendon repair on 2/13/2020 for a work related injury. He continued to complain of pain and was slow to progress with physical therapy. Subsequent MRI and ultrasound showed no evidence of re-tear. He underwent an FCE which placed him on permanent restrictions. Based on the evaluation of permanent impairment, 4th Edition, he sustained a 5% whole person or a 12% lower impairment rating based on grade 4 muscle weakness to the left knee (Table 38 and 39 page 77). Please call with any questions or concerns.

The parties stipulated that "in November 2020, Claimant was assigned a twelve percent (12%) impairment rating to the left leg, which was accepted and is currently being paid by Respondents."

Dr. Smith performed a second procedure on February 24, 2021: “1. Open exploration and evaluation of left quad tendon. 2. Repair of diagnostic tenotomy quad tendon.” The pre- and post-operative diagnosis was “1. Left knee pain following quad tendon repair.”

The parties stipulated that the claimant “reached MMI on or about July 13, 2021.”

The claimant participated in a Functional Capacity Evaluation on August 13, 2021: “The results of this evaluation indicate that a reliable effort was put forth, with 52 of 55 consistency measures within expected limits....Mr. Payne completed functional testing on this date with **reliable** results. Overall, Mr. Payne demonstrated the ability to perform work **in the MEDIUM** classification of work[.]”

Dr. Smith reported on September 5, 2021:

Darryl Payne sustained a left quad tendon rupture in [early] January of 2020. He was seen in clinic on 1/28/2021 approximately 3 weeks after his injury and determined to have a left quad tendon rupture. He underwent repair on 2/13/2020. He continued to have pain over the following year despite extensive physical therapy. He underwent exploration of the tendon on 2/24/2021 which showed complete healing. He was placed back in therapy but continue (sic) to complain of pain and weakness. He reached MMI on 7/13/2021. He was sent for an FCE which was reliable and placed him in the medium work classification. Based on the guides to the evaluation of permanent impairment, 4th edition, he sustained a 20% whole person impairment due to his routine use of a cane for ambulation (p. 76, table 36). Please call with any questions or concerns.

The parties stipulated that “in September 2021, Claimant was assigned a twenty percent (20%) whole body impairment rating, which was not paid by Respondents.”

Dr. Smith reported on October 15, 2021:

Darryl Payne underwent a left quadriceps tendon repair on February 13, 2020. He had difficulty following surgery and was slow to recover. He underwent an exploration of his quadriceps tendon on February 24, 2021 which showed healing of the tendon. He reached MMI on July 13, 2021. He underwent a functional capacity exam which placed him at the medium work classification as defined by the US Department of Labor. Based on his range of motion he will have a 4% whole person impairment or a 10% lower extremity impairment (table 41, page 78). Please call with any questions or concerns.

The parties stipulated that “in October 2021, Claimant was assigned an additional ten percent (10%) to the left lower extremity, which is also currently being paid by Respondents.”

The claimant treated at Helena Regional Medical Center on October 28, 2021:

52-year-old male with complaint of standing outside his home at which time his left leg gave out. Patient fell backwards hitting the back of his head on concrete. Patient states he had momentary loss of consciousness. Now with complaint of having a severe diffuse throbbing headache. Patient also with complaint of pain in his left ankle, left hip, and lower left back. Patient states he has had recent tendon surgery on his left leg....There is no tenderness or swelling of the left knee....

The diagnosis on October 28, 2021 was “Fall on same level, unspecified; Laceration without foreign body of scalp; Acute post-traumatic headache; Sprain of ankle; Contusion of left hip.”

A pre-hearing order was filed on January 26, 2022. The claimant contended, “(a) That he is permanently and totally disabled as a result of his work injuries; (b) That he is entitled to additional PPD based on 20% whole body impairment; (c) That the benefits set forth above have been controverted and thus undersigned counsel is entitled to maximum statutory attorney’s fees. **All other issues are reserved.**”

The respondents contended, “Respondents contend that the claimant has received all reasonable and necessary medical treatment for compensable left knee injury. After the January 7, 2020 incident the claimant came under the care of Dr. Philip A. Smith. The claimant underwent a left quadriceps tendon repair on February 13, 2020. He underwent an exploration of his quadriceps tendon on February 24, 2021 and was found to be at MMI on July 13, 2021. The claimant was assigned impairment ratings of 12% to the lower extremity on 11/29/2020, and an additional 10% to the lower extremity on 10/15/2021. The claimant is currently receiving permanent partial disability benefits in payment of the assigned impairment ratings.”

The respondents contended, “The claimant sustained a compensable injury to his left lower extremity. As the claimant contends he sustained injuries to his lower extremities, the limitations expressed in Ark. Code Ann. §11-9-521(g) are applicable. The Respondents contend that the claimant is not permanently and totally disabled. The claimant underwent a functional capacity examination which placed him at the MEDIUM work classification as defined by the U.S. Department of Labor. None of the claimant’s physicians have indicated that the claimant is permanently and totally disabled. The claimant has also been evaluated for vocational rehabilitation possibilities by Heather Taylor, MRC, CRC. The Respondents contend that the claimant is not permanently and totally disabled and that he is receiving and has received all appropriate indemnity benefits relative to his compensable scheduled lower extremity injury.”

The parties agreed to litigate the following issues:

1. Permanent total disability, or in the alternative, wage loss.
2. PPD based on twenty percent (20%) whole body impairment.
3. Attorney’s fees.
4. All other issues are reserved.

A hearing was held on March 30, 2022. The claimant testified on direct examination:

Q. You told me before the hearing that you wanted the judge to see your leg. Do you want to do that?

A. Yes, please....I got on ice, so I got to pull this off. Okay. (Witness pulling up pants leg to show his knee). This is where

I'm having my problems at...it's something going on right here. (Indicating left knee)...And they had stated that my patella was something defect (sic) in my records, and I asked the doctor about it and he – that's when the second surgery was advised to me, but on this leg, you can see the difference. (Pulled up pants leg to compare both knees)....

Q. What's your physical condition now? You showed the judge your leg, other than the appearance of your leg and the pain that you've described, what's your physical condition like now?

A. Just swelling, throbbing, weakness. My equilibrium is off, balance. It's just my leg is giving me problems.

An administrative law judge filed an opinion on June 22, 2022. The administrative law judge found, among other things, that the claimant “failed to prove by a preponderance of the evidence that he has been rendered permanently and totally disabled as a result of his compensable left lower extremity injury. Alternatively, Claimant has failed to prove that he is entitled to wage loss for his scheduled injury to the left lower extremity.” The administrative law judge found that the claimant “failed to prove by a preponderance of the evidence that he is entitled to a twenty percent (20%) permanent impairment rating to the body as a whole.”

There was no appeal of the administrative law judge's opinion filed June 22, 2022, and the parties have stipulated, “The previous decision in this matter is binding on this proceeding under the Law of the Case Doctrine.”

Dr. Charles E. Pearce reported on December 20, 2022:

The patient is a 53-year-old former employee of Phillips County Community College as a janitor and maintenance person who injured his left knee when he fell down about 7-8 steps while [carrying] computers. He apparently sustained a direct blow. He was evaluated locally and subsequently had MRI scan of his left knee on January 15, 2020. By report this showed soft tissue edema in the suprapatellar bursa and suspected partial tear of his quadriceps tendon. He was then seen by Dr. Smith at Ortho Arkansas and had open repair of his quadriceps tendon on February 13, 2020. The patient had a relatively uneventful postoperative course initially but was unable to return to normal activities because of ongoing pain and weakness about his knee leading to a follow-up MRI scan on July 21, 2020 showing the repaired tendon to be intact. There was chondromalacia of the patella noted. Despite time and modification activities the patient had continued pain leading to a 2nd surgery on February 24, 2021 by Dr. Smith which was opened (sic) exploration of the quadriceps tendon which appeared to be intact. The most recent MRI scan was on October 18, 2022 and is here for my review. There were reports of subtle meniscal tears. However I am not sure that these would amount to any type of need for intervention and I am doubtful they are causing his current symptoms. He was found to have moderate chondromalacia of his patella especially the medial facet. He was then seen by Dr. Busby for a 2nd opinion on November 18, 2022 and she opined that a knee arthroscopy with chondroplasty and meniscectomy was indicated. She also stated that his major issue is quadriceps weakness that was relatively significant. I agree with that statement. Currently he is using a cane in his right hand [to] ambulate he has not been able to return to any type of gainful employment since his injury and reports multiple falls. This is because of leg weakness and giving way. He had been employed at this job for about a year before his injury. He does not have a history of prior knee problems. The patient tells me that he has had an FCE performed and in fact this had been ordered. I do not have those results. I would like to look at those before I make final recommendations for him. He does take ibuprofen for pain. He recently has been given hydrocodone as well....

left KNEE: There is a well-healed midline incision. The patellar and quadriceps tendon by palpation are intact. He

has the ability to initiate isometric quads but cannot maintain a straight leg raise or against resistance. He complains of pain and crepitation about the knee and he in fact does have moderate patellofemoral crepitation through range of motion. His motion is 0 to about 100 degrees...There is no collateral ligament or AP instability of the knee. Of significance measuring his thigh circumference 10 centimeters proximal to the superior patellar pole he is 2 centimeters smaller on the left compared to the right.

IMAGING: X-rays ordered and interpreted by me he has disuse atrophy of the patella. The patellofemoral joints are not well visualized because the patient is unable to flex to the appropriate level for those views.

IMPRESSION: Post open left knee quadriceps tendon repair with marked quadriceps weakness. He has underlying patellofemoral chondromalacia most likely as well. Doubt meniscal pathology as etiology of pain.

PLAN: 1. The patient is not at maximal medical improvement pending my review of FCE that was completed. Patient says that he did that test. We will try to get a copy of the results.

2. At most he can do a sitting job only.

3. He has previously been given an impairment rating based on weakness of the leg which appears to be appropriate.

4. There are no other diagnostic tests and/or surgery that I can see that are indicated at this point.

5. Once I receive the FCE will make further recommendation regarding need for further intervention and care. These statements are made within a degree of medical certainty.

There is an addendum being dictated on December 30, 2022: I have received and reviewed the functional capacity evaluations completed by this patient on August 13, 2021 and November 3, 2021. The patient gave a valid effort with both tests and for both tests he was placed in the medium category of work as outlined by the department of labor. This allows occasional lifting from 21-50 lbs, frequent lifting 11-20 lbs and constant lifting 1-10 lbs. These are his restrictions. He has previously been given impairment ratings and no additional impairment is indicated. There is no indication for further diagnostic or treatment modalities for him. His main deficit is related to decreased strength in the leg which is fully under his own control in my opinion. Arthroscopy previously discussed by another physician would be of little benefit for

him. These statements are made within a degree of medical certainty.

Rhonda Murphy, Assistant Claims Determination Manager, Arkansas Insurance Department, Public Employee Claims Division, corresponded with Fenter Physical Therapy Center on January 18, 2023: “I am authorizing the following treatment: X Authorizing (3x4 weeks) of physical therapy visits for (Left Quad Strengthening).”

A pre-hearing order was filed on May 25, 2023. According to a questionnaire filed by the claimant on March 30, 2023, the claimant appeared to contend that he was entitled to “Medical attention and if I get a job or compensation.”

The respondents contended, “Respondents contend that the claimant has received all reasonable and necessary medical treatment for his compensable left lower extremity injury. After the January 7, 2020 incident the claimant came under the care of Dr. Philip A. Smith. The claimant underwent a left quadriceps tendon repair on February 13, 2020. He underwent an exploration of his quadriceps tendon on February 24, 2021 and was found to be at MMI on July 13, 2021. The claimant was assigned impairment ratings of 12% to the lower extremity on 11/29/2020, and an additional 10% to the lower extremity on 10/15/2021. The respondents accepted and have paid PPD benefits relative to the assigned impairment ratings. A hearing was held in this claim on March 30, 2022

and an Opinion issued on June 22, 2022 by Administrative Law Judge Katie Anderson. After a review of the evidence ALJ Anderson determined that the claimant was not permanently and totally disabled, he was not entitled to any wage-loss disability, and he was not entitled to PPD benefits for a 20% whole body impairment rating. The issues and findings from that hearing are now res judicata and the law of the case.”

The respondents contended, “The claimant was granted a Change of Physician to Dr. D’Orsay Bryant on July 18, 2022. The respondents have paid for an evaluation of the claimant by Dr. Bryant. The claimant has recently undergone physical therapy treatment at the respondents’ expense. The Respondents contend that the claimant is not permanently and totally disabled and that he is receiving all appropriate indemnity benefits relative to his compensable scheduled lower extremity injury.”

According to the pre-hearing order, the parties agreed to litigate the following issues:

1. Whether Claimant is entitled to additional treatment of his stipulated compensable left lower extremity injury.
2. Whether Claimant is entitled to temporary total disability benefits. All other issues have been reserved.

The respondents’ attorney examined the *pro se* claimant at a deposition taken June 20, 2023:

Q. I’m looking at a report, Darryl, from December of last year where you have been to see a Dr. Charles Pearce at UAMS in Little Rock. Is that right?

A. Yes, sir....

Q. How did that appointment with Dr. Pearce go? Do you remember?

A. I guess fine. I mean, he checked me out....

Q. And Dr. Pearce, at least in December of last year, I think he says here – and I'll just ask you if you remember this. He said, "There are no other diagnostic tests and/or surgery that I can see that are indicated at this point." Do you remember Dr. Pearce telling you that he didn't think you needed any surgery?

A. Yes.

Q. Okay. Is that the only time you've seen Dr. Pearce?

A. Yes. And it's workers' compensation's doctor.

Q. Okay. And so after you saw him – and that was in December of last year. So after you saw Dr. Pearce back then in December of last year, Darryl, did you see any other orthopedic doctors?

A. Yes.

Q. Okay. Who did you see after Dr. Pearce?

A. Susan Busby before Dr. Pearce.

Q. Okay. Dr. Susan Busby?

A. Yes. She's in Forrest City, Arkansas.

Q. Okay. And how was it that you ended up going to see Dr. Busby?

A. From my PCP.

Q. Okay. And I don't know if I have any reports from Dr. Busby, but can you let me know what did she tell you and what did she suggest for you? Do you remember?

A. Knee scope.

Q. Like, a laparoscopic knee surgery?

A. Yes, sir.

Q. Okay. And what – is that something that – did you talk to the workers' compensation people about that?

A. Yes.

Q. And what did they tell you about the possibility of a knee surgery?

A. Well, I contacted Rhonda Murphy, and she said that it doesn't – my meniscus tears and whatnot don't fall under workers' compensation, only my quad.

Q. Okay. And I guess you've not had any kind of knee surgery up until now. Is that correct?

A. No....

Q. And is it your thinking that you would like to have workers' compensation pay for that knee surgery?

A. Yes.

Q. Okay. So besides Dr. Busby, and we talked about Dr. Pearce, I know at one point – this was in August of last year. You saw a Dr. D'Orsay Bryant down in El Dorado. Is that correct?

A. Yes. COP, that's my change of physician.

Q. Right. And so besides Dr. Pearce, Dr. Bryant, and Dr. Busby, have there been any other, let's say, orthopedic doctors that have seen you for your leg or knee or any of that problem?

A. No....

Q. Now, as we're talking here today, you've already mentioned that you're interested in the prospect of some kind of a knee surgery. Is that correct?

A. Yes.

Q. So help me understand how that came about, where it looks like the injury was initially to the quadriceps tendon. Correct?

A. Correct.

Q. And now, three-and-a-half years later, we're talking about trying to get knee surgery on your knee. Kind of tell me how that injury from the day you got hurt until now, how has that progressed or changed or somehow or another affected your knee?

A. Well, first of all, if you look at the – it was stated when I first initially fell, it was a contusion to my hip and my knee....

Q. And so help me – I mean, if I went from there, how does that lead us to today, where you're asking for surgery on that knee?

A. Well, I've had several falls and meniscus tears. It's in Susan Busby's report, and my MRI states it....

Q. What kind of issues, if any, are you having with your knee these days?

A. Buckling....

Q. And at the hearing we've got scheduled in your case coming up next month, I guess, two issues. One's going to be whether or not you're entitled to additional medical treatment for your left leg injury. And so you've told me this morning that Dr. Busby, I think, has recommended a knee surgery for you. Is that right?

A. Yes.

Q. Is that the medical treatment that you're seeking at this point?

A. Chronic joint pain in my patella, but she spoke of a few things.

Q. Okay. Tell me what she spoke of, just so I know.

A. Meniscus tears from my MRI, patella – she stated that my patella joint wasn't observed at the time of my surgery. It's something with my patella once again.

Q. Okay. And so with the meniscus tear issue and then this patella issue, is it your understanding that Dr. Busby wants to do – or some doctor would want to do some kind of surgery to fix that?

A. Yes, sir....

Q. When was the last time you were at Fena Physical Therapy for physical therapy? Do you happen to know?

A. Months ago.

Q. Okay. And how did it come about that physical therapy stopped? Did you decide not to go back?

A. Workers' compensation only paid for six weeks.

Q. Okay. Did the six weeks that you went to physical therapy seem to help your condition?

A. Not at all....

Q. I guess I want to make sure, too, that I understand all of this right, Darryl. Because when we started a little while ago, I asked you about this report from Dr. Pearce from December of last year, about six months ago, where he says in this report, "There are no other diagnostic tests or surgery that I can see that are indicated at this point." That's what Dr. Pearce said six months ago. So is that somehow different now?

A. Before Dr. Pearce, once again, it was Ms. Busby. So I went to Ms. Busby first, then workers' compensation sent me to an independent medical examiner, Dr. Pearce, when I started calling Rhonda on a daily basis.

Q. Okay.

A. She sent me to the IME doctor, Dr. Pearce.

Q. All right.

A. Once Dr. Pearce got a note of Ms. Busby's information – from Dr. Pearce, I went back to Ms. Busby. That's the last follow up.

Q. Okay.

- A. Do you mind – can I show you?
Q. Show me what?
A. Ms. Busby's report.
Q. Sure, please....We took a quick break there, and you showed me what looks to be a portion of a report from Dr. Busby, that looks to be dated November 9th, 2022. Correct?
A. I have the whole report if you want it.
Q. Yeah. I guess, for purposes of today, we can agree you saw Dr. Busby on November the 9th?
A. Yes, sir.
Q. Then workers' compensation ended up getting you to Dr. Pearce, who then saw you on December 20th, 2022, about six weeks later. Correct?
A. Correct.
Q. Okay. So Darryl, let me ask you this. We're here today talking about surgery for your knee, which you've – as I understand it, you would like to have that performed.
A. Please....
Q. So that's one of the issues we'll talk about, I guess, next month at the hearing is additional medical treatment for you.
A. Yes....
Q. Do you know if Medicaid would pay for a knee surgery for you?
A. Well, I let my PCP know, and she's saying that it's a workers' compensation case. So everywhere I go, I get denied, even when I try to go to any referral. Nobody wanted to take on my workers' compensation, so that was my whole problem when I addressed Philip Hood. I contacted him and complained that I could not get any type of treatment because I was on workers' compensation. So everybody ignores my knee. But Medicaid pays for everything else.

A hearing was held on August 17, 2023. At that time, the following colloquy took place:

MR. MONTGOMERY: I agree that the employer-employee-carrier relationship existed on or about January 7, 2020, when the claimant sustained a compensation (sic) work-related injury to his left leg. I have written, and I believe I told Judge Fine on the phone, and I think we should add a comma and

add the words “specifically a left quadriceps tendon injury,” okay? So that would be one addition I would ask for....

JUDGE HOWE: So, Mr. Payne, do you understand and agree with that?

CLAIMANT: That it's a left quadriceps –

JUDGE HOWE: Quadriceps injury, that that is the injury that occurred on that date?

CLAIMANT: Yes.

JUDGE HOWE: Okay. So we can stipulate to that. The record will be reflective of that.

The *pro se* claimant attempted to introduce into the record the results of MRI testing ordered by his primary care physician. The respondents objected to introduction of the medical evidence, and the administrative law judge sustained the objection without allowing the claimant to proffer the evidence.

An administrative law judge filed an opinion on November 17, 2023. The administrative law judge found that the claimant failed to prove he was entitled to additional medical treatment or additional indemnity benefits. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

The 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)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar*

General Stores, 91 Ark. App. 260, 209 S.W.3d 445 (2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). 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 administrative law judge found in the present matter, “3. The claimant failed to establish by a preponderance of the evidence that he is entitled to additional medical treatment for his compensable injury. Nor is he entitled to any additional indemnity benefits related thereto.” The Full Commission finds that the claimant proved additional medical treatment was reasonably necessary in connection with the compensable injury sustained by the claimant.

The respondents essentially argue in their brief to the Full Commission that the claimant did not sustain a compensable left knee injury. The Full Commission notes that, at the hearing held August 17, 2023, the respondents entered a revised stipulation that the claimant sustained “specifically a left quadriceps injury.” Although the *pro se* claimant tacitly assented to this late change, the Full Commission finds that the respondents’ revised stipulation is not supported by the prior agreed stipulations or the evidence of record.

The parties initially stipulated that the employment relationship existed on January 7, 2020, at which time the claimant “sustained a compensable work-related injury *to his left leg* [emphasis supplied].” It was reported that the claimant was suffering from “left knee pain” following the compensable injury, and “soft tissue irregularity” in the claimant’s left anterior lower leg was noted. Dr. Smith reported in November 2020 that the claimant had sustained 12% permanent anatomical impairment based in part on “muscle weakness to the left knee” following the compensable injury. The respondents accepted this assigned permanent impairment rating which involved the claimant’s left knee. Dr. Smith performed a second surgical procedure in February 2021 based in part on “Left knee pain following quad tendon repair.”

The claimant contended in a pre-hearing order filed January 26, 2022 that he was entitled to permanent total disability benefits. The respondents contended at that time that the claimant had received reasonably necessary medical treatment provided in connection with the claimant’s “*compensable left knee injury* [emphasis supplied].” The respondents also contended in the January 26, 2022 pre-hearing order that the claimant “sustained a compensable injury to his left lower extremity.” An administrative law judge filed an opinion on June 22, 2022 and found, among other things, that the claimant did not prove he was permanently

totally disabled. The parties at that time did not adjudicate the claimant's entitlement to additional medical treatment, and the administrative law judge did not enter a finding with regard to additional medical treatment.

The Arkansas Workers' Compensation Commission shall make such investigation or inquiry in a manner as will best ascertain the rights of the parties. Ark. Code Ann. §11-9-705(a)(1)(Repl. 2012); *Bronco Industrial Services, LLC v. Brooks*, 2021 Ark. App. 279, 625 S.W.3d 753. See also *Clark v. Peabody Testing Service*, 265 Ark. 489, 579 S.W.2d 360 (1979).

The claimant in the present matter did not sustain only a "left quadriceps tendon" injury. We reiterate the parties' stipulation that the claimant sustained a compensable injury "to his left leg" on January 7, 2020. The claimant was plainly treated for "left knee pain" following the compensable injury, and there were objective findings of "soft tissue irregularity" in the claimant's left leg. After the second surgery on February 24, 2021, Dr. Smith noted "Left knee pain following quad tendon repair." A pre-hearing order was filed on January 26, 2022. The respondents contended that the claimant had received all reasonably necessary medical treatment provided in connection with the "compensable left knee injury." The respondents also contended that the claimant had sustained a compensable injury "to his left lower extremity."

A hearing was held before an administrative law judge on March 30, 2022. The claimant informed the administrative law judge that he was suffering from problems in his left knee as a result of the stipulated compensable injury to the claimant's left lower extremity. The administrative law judge filed an opinion on June 22, 2022. The administrative law judge found, among other things, that the claimant "failed to prove by a preponderance of the evidence that he has been rendered permanently and totally disabled as a result of his *compensable left lower extremity injury* [emphasis supplied]." The parties have stipulated that the administrative law judge's June 22, 2022 decision is "the law of the case." The administrative law judge's decision patently states that the claimant injured his left lower extremity, not just the "quadriceps tendon." Neither the prior agreed stipulations nor the evidence of record supports the respondents' assertion on appeal that the claimant failed to prove he sustained a compensable left knee injury on January 7, 2020.

It is the Commission's duty to translate the evidence of record into findings of fact. *Gencorp Polymer Prods. v. Landers*, 36 Ark. App. 190, 820 S.W.2d 475 (1991). It is also within the Commission's province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the evidence demonstrates that the claimant sustained a

compensable injury to his left lower extremity, including his left knee, on January 7, 2020. The claimant has undergone two surgeries but continues to suffer with chronic pain and testified that he has difficulty even straightening his left leg. The evidence of record corroborates the claimant's testimony that his left leg will occasionally "give out," causing the claimant to fall. This corroborating evidence includes the report from Helena Regional Medical Center dated October 28, 2021.

The claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment to be provided by Dr. Busby. Based on Dr. Pearce's December 20, 2022 report, Dr. Busby has explicitly noted that an October 18, 2022 report showed "meniscal tears" in the claimant's left knee. Dr. Pearce's physical examination showed that the circumference of the claimant's left lower extremity is 2 centimeters smaller than the right lower extremity. The Full Commission assigns minimal evidentiary weight to Dr. Pearce's opinion, "There is no indication for further diagnostic or treatment modalities for him."

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved he was entitled to additional medical treatment to be provided by Dr. Busby. The claimant proved that said treatment was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The parties stipulated that the claimant reached

maximum medical improvement on or about July 13, 2021. The evidence therefore demonstrates that the claimant reached the end of a healing period no later than July 13, 2021. An employee who has suffered a scheduled injury, like the claimant, is to receive temporary total disability benefits during his healing period or until he returns to work, whichever occurs first. Ark. Code Ann. §11-9-521(a)(Repl. 2012); *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Based on the current evidence of record, the claimant did not prove that he re-entered a healing period at any time after July 13, 2021. The claimant therefore did not prove he was entitled to additional temporary total disability benefits.

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 finding that the claimant proved by a preponderance of the evidence that he is entitled to additional medical treatment.

I. The claimant is not entitled to additional medical treatment.

Ark. Code Ann. § 11-9-508(a) (Repl. 2012) requires an employer to provide an employee with medical and surgical treatment "as may be reasonably necessary in connection with the injury received by the employee." The claimant has the burden of proving by a preponderance of the evidence that the additional treatment is reasonable and necessary. *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148 (2010). What constitutes reasonably necessary treatment is a question of fact for the Commission. *Gant v. First Step, Inc.*, 2023 Ark. App. 393, 675 S.W.3d 445 (2023). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it sought to remedy. *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, 426 S.W.3d 539 (2013).

It is within the Commission's province to weigh all the medical evidence to determine what is most credible and to determine its medical soundness and probative force. *Sheridan Sch. Dist. v. Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* However, the Commission has the authority to accept or reject medical opinions. *Williams v. Ark Dept. of Community Corrections*,

2016 Ark. App. 427, 502 S.W. 3d 530 (2016). Furthermore, it is the Commission's duty to use its experience and expertise in translating the testimony of medical experts into findings of fact and to draw inferences when testimony is open to more than a single interpretation. *Id.*

Here, the claimant suffered an admittedly compensable injury to his left quadriceps on January 7, 2020. Dr. Phillip A. Smith performed a left quadriceps tendon repair on February 13, 2020. (Resp. Ex. 1, P. 8). On February 24, 2021, the claimant underwent exploration of the tendon, also performed by Dr. Smith, which showed complete healing. *Id.* The claimant reached maximum medical improvement on July 13, 2021 and was sent for a functional capacity evaluation (FCE) where he performed reliably. *Id.* Ultimately, he was assigned twenty percent (20%) whole person impairment on September 5, 2021. *Id.*

In June of 2022, an administrative law judge (ALJ) ruled that the claimant was not permanently and totally disabled or entitled to wage-loss disability benefits. The claimant subsequently sought a one-time change of physician and was evaluated by Dr. D'Orsay Bryant in El Dorado. (Hrng. Tr, Pp. 24-25). He then treated with Dr. Charles E. Pearce, an orthopedic surgeon, on December 20, 2022. (Resp. Ex. 1, Pp. 15-17). Dr. Pearce reviewed the claimant's medical records and conducted a physical examination of the claimant, opining that "[t]here are no other diagnostic

tests and/or surgery that I can see that are indicated at this point.” (Resp. Ex. 1, P. 16). Upon receiving and reviewing the claimant’s FCE, Dr. Pearce opined:

He has previously been given impairment ratings and no additional impairment is indicated. There is no indication for further diagnostic or treatment modalities for him. His main deficit is related to decreased strength in the leg which is fully under his own control in my opinion. Arthroscopy previously discussed by another physician would be of little benefit for him. These statements are made within a degree of medical certainty. *Id.*

The claimant has wholly failed to meet his burden of proving that he is entitled to any treatment of benefits beyond what has been paid. Dr. Pearce opined that the no further treatment would benefit the claimant and that his sole remaining complaint – weakness – is subject to the claimant’s own control. There is no documentary evidence or testimony supporting the claimant’s contention that he suffers from a condition that requires treatment that is necessary, reasonable, or causally related to his compensable injury.

II. The agreed stipulation should remain in the record.

At the hearing, the respondent attorney sought to modify the parties' pre-hearing stipulations to state that the "claimant sustained a compensation [sic] work-related injury to his left leg . . . 'specifically a left quadriceps tendon injury.'" (Hrng. Tr., P. 10). In granting this modification, the ALJ had the following exchange with the claimant:

JUDGE HOWE: So, Mr. Payne, do you understand and agree with that?

CLAIMANT: That it's a left quadriceps –

JUDGE HOWE: Quadriceps injury, that that is the injury that occurred on that date?

CLAIMANT: Yes.

JUDGE HOWE: Okay. So we can stipulate to that. The record will be reflective of that.
Id.

Arkansas Code Annotated § 11-9-705(a)(1) provides that in conducting a hearing,

the Commission shall not be bound by technical or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner as will best ascertain the rights of the parties.

Our Court of Appeals has previously agreed with Commission rulings on this matter. See *Jackson v. Circle T Express*, 49 Ark. App. 94, 896 S.W.2d 602 (1995). In *Jackson*, the employer initially accepted compensability of a claim and later stipulated that the claim was compensable at the prehearing conference. *Id.* This stipulation was memorialized in a pre-hearing order. *Id.* At the hearing, the employer sought to withdraw its stipulation regarding compensability. *Id.* The Commission found that Circle T was not precluded from challenging the appellant's claim as a result of the stipulation or payment of compensation based upon the appellant's failure to prove that he sustained a compensable injury. *Id.* The Commission refused to enforce the stipulation because it found that such enforcement would be contrary to the basic notions of justice and fair play. *Id.* It concluded that "to find on one hand that the facts fail to establish a cause of action and on the other to impose liability on one of the parties is not logically consistent or compatible with the interests of justice and fair play." *Id.*

Further, “[p]ro se claimants receive no special consideration of their argument and are held to the same standard as a licensed attorney.” *Boykin v. Crockett Adjustment Ins.*, 2013 Ark. App. 157 (2013). “We will not develop an issue for a party at the appellate level.” *Id.*

Although the Majority contends that the “respondents’ revised stipulation is not supported by the prior agreed stipulations or the evidence of the record,” and that the claimant only “tacitly” assented to the modification, this is contrary to the facts and the notion of fair play. (P. 18). The claimant underwent imaging studies on his left knee on the date of the injury which revealed “[n]o acute fracture or dislocation is appreciated. No significant suprapatellar bursal effusion is identified.” (Resp. Ex. 1, P. 1). The records at hand do not reflect any further findings or treatment regarding the claimant’s left knee.

It is our duty to ascertain the rights of the parties while ensuring that the notions of justice and fair play are upheld. The Majority sets aside a stipulation that is clearly and knowingly agreed to by the parties while disregarding the evidence that the issue of the claimant’s left knee has not been litigated in the three years prior to this hearing. This is unnecessarily punitive to the respondent carrier who, once this stipulation was entered into the record, did not have the appropriate opportunity to defend against this claim. It goes beyond our duties to create and litigate an issue on

behalf of a pro-se claimant and is a violation of our well-settled rules, and therefore this stipulation should remain in the record.

Accordingly, for the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner