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ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-22-687

ARKANSAS DEPARTMENT OF
TRANSPORTATION AND PUBLIC
EMPLOYEE CLAIMS DIVISION
APPELLANTS

V.

ROSE HILL

APPELLEE

Opinion Delivered October 4, 2023

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. H007283]

AFFIRMED

BRANDON J. HARRISON, Chief Judge

The Arkansas Department of Transportation (ARDOT) appeals the decision of the Arkansas Workers' Compensation Commission (the Commission) that reversed the opinion of the administrative law judge (ALJ) and found that Rose Hill had proved that she is entitled to additional medical treatment and additional temporary total-disability (TTD) benefits. ARDOT contends that fair-minded persons with the same facts before them could not have reached the same conclusion as the Commission. We affirm the Commission's decision.

On 23 September 2020, Hill injured her right knee after she stepped into a hole while picking up litter. ARDOT initially accepted the claim as compensable but later denied Hill's entitlement to additional medical treatment and additional TTD benefits. The ALJ held a hearing on 28 September 2021, and the evidence showed the following.

Hill was first injured during her employment with ARDOT in 2010 when a tractor ran over her right hip and leg. She had an arthroscopic procedure on her right knee performed by Dr. Johannes Gruenwald in 2011 and a hip replacement performed by Dr. Lowry Barnes in 2016. Dr. Gruenwald's postoperative report indicated no torn meniscus in her right knee.

In June 2018, she had a brief episode of swelling in her right knee, and she again saw Dr. Barnes. Hill reported right knee pain that had developed three weeks ago, but she did not recall any mechanism of injury.¹ According to the medical notes, she complained of "swelling, buckling, giving way, in catching of the right knee. Is worse with increased activity." Dr. Barnes ordered an MRI, which showed a "complex tear of the medial meniscus." She did not miss any work due to this episode.

On 23 September 2020, she was working with a litter crew when she stepped into a grass-covered hole. She "twisted" and "heard something . . . give a popping sensation and the sensation generated up the back of my leg." Her knee felt "stretched out of place," a different type of pain than what she felt in 2018. ARDOT sent her to Concentra Health Center for medical treatment, and she started physical therapy, but she was then informed that "workman's comp wanted me to go back and see Dr. Barnes."

An MRI performed on October 9 showed the same meniscus tear. Dr. Barnes noted this result and referred Hill to Dr. Charles Pearce. In his notes, Dr. Pearce indicated that Hill had been in pain and using a crutch since the September 23 incident and that "she is

¹The medical notes show that Hill reported that "this is worker's [c]omp related," but no workers'-compensation claim was filed for this June 2018 incident.

having enough difficulty that arthroscopy should be considered.” Hill then returned to Dr. Barnes for reevaluation, and he remarked that her symptoms “are much different now than what she had prior to [September 23]. She had continued to work for years without problems with her knee even though the MRI may have looked similar.” Dr. Barnes opined,

[I]t appears that she did have a previous MRI by [sic] that showed her to have a cartilage tear but that this was giving her no significant symptoms. Her acute injury from stepping in the [hole] seems to be what caused her to have significant symptoms therefore resulting in the need for arthroscopic treatment. It is my impression that this may have been pre-existing but was not symptomatic. Based upon my narrative above, it is my impression that her recent injury is the major cause for the need for her arthroscopic medial meniscectomy. This would be as a direct result of the reported 9 23 2020 injury.

In a letter dated 29 October 2020, the Public Employee Claims Division sent Dr. Pearce a series of questions “to obtain clarification regarding injury related pathology and treatment.” Those questions, and Dr. Pearce’s answers, include the following:

1. What was Ms. Hill’s 09/23/20 injury diagnosis?

Exacerbation of knee pain & med. men. tear
2. What pathology identified on the MRI was considered acute 09/23/20 injury related?

This is an exacerbation of previous OTJ injury in 2018
3. Would the mechanism of the 09/23/20 injury (twisting of the knee) have resulted in any pathology changes identified on her MRI?

Yes they could, but prob an exacerbation of 2018 injury
4. Is the proposed arthroscopic medial meniscectomy and chondroplasty indicated and medically appropriate as the result of the 09/23/20 injury versus pre-existing pathology? Please explain and provide supporting rationale.

It is pre-existent to that date, but 2018 was also OTJ

5. Can you state, within a reasonable degree of medical certainty, that the major cause (greater than 50%) for the arthroscopic medial meniscectomy and chondroplasty are the direct result of the reported 09/23/20 injury resulting in symptoms and surgical pathology? Please explain and provide supporting rationale.

Yes, exacerbation/aggravation. If 2018 is not OTJ, then new dx is pre-existent

6. If the need for the arthroscopic medial meniscectomy and chondroplasty are indicated as the result of the pre-existing pathology, is there any additional treatment indicated as the result of the 09/23/20 injury?

No. If pre-existent no other tx indicated

7. If no additional treatment is indicated as the result of the 09/23/20 injury, has Ms. Hill achieved maximum medical improvement (MMI) as the result of her 09/23/20 injury?

Not at MMI. If 2018 not OTJ, then pt at MMI

ARDOT ultimately controverted further medical treatment and additional TTD as of 4 November 2020.

After hearing Hill's testimony and reviewing all medical records in the case, the ALJ found that Hill had failed to meet her burden of proof in demonstrating that the torn meniscus and related degenerative changes in her right knee are related to, much less constitute reasonably necessary treatment for, her September 2020 compensable injury. The ALJ reasoned:

First, since both the June 2018 non-work-related MRI and the post-subject September 2020 injury MRI (performed in October 2020) are essentially identical, it is patently unreasonable to relate the current request for elective arthroscopic partial meniscectomy surgery to the September 2020 work-related incident. In order to relate the proposed surgery and the

September 2020 work[-]related injury, one must engage in sheer speculation and conjecture which, of course, will not support a claim for benefits.

Second, although for some reason (apparently, the claimant's self-reported history) Dr. Barnes appears to have been under the impression the claimant's right knee was relatively asymptomatic and that her symptoms after she stepped in the hole on September 23, 2020, were different in nature and character than the claimant's June 2018 complaints; however, the preponderance of the medical record herein does not support this presumption which, again, appears to have been based on either an inaccurate, or inaccurately perceived, history of complaints.

.....

Significantly, on June 13, 2018, Heather Rankin, Dr. Barnes's PA, examined the claimant for additional complaints of right knee pain. At that time the claimant reported she developed right knee pain three (3) weeks ago and "she does not recall any mechanism of injury."

Even more significantly—and apparently contrary to Dr. Barnes's understanding after the September 2020 work incident—the medical record reveals the claimant reported *some significant complaints such as swelling, buckling, giving way, and catching of the right knee which was worse with increased activity*. In June 2020, the claimant herself admitted there was no incident at work or anywhere else that prompted her to seek Dr. Barnes's treatment for these significant symptoms. As the claimant testified under oath: "No, nothing happened to me" that might have caused her right knee to hurt, swell, and buckle in 2018 June.

Consequently, although there appears to be some confusion or misunderstanding reflected in a couple of the medical records that perhaps both Dr. Barnes and Dr. Pearce were at least at that time under the impression the June 2018 incident "is also work related", the medical record—and the claimant's own testimony given under oath—conclusively demonstrate this presumption to be inaccurate, false, and quite simply, *wrong*. Once again, the preponderance of the medical evidence conclusively proves otherwise, as the claimant testified she did not know what happened in June 2018 to cause right knee to hurt, swell, and buckle. Moreover, Dr. Barnes confirmed that the June 2018 meniscus tear seen on the June 2018 MRI was *not related to the claimant's compensable 2010 claim wherein she injured her hip and knee*.

.....

The relevant objective medical evidence simply does not document the claimant sustained any new acute injury on September 23, 2020, as a result of stepping in a hole at work. The claimant has a long-standing history of right knee complaints dating back as far as 2010. The June 2020 MRI revealed a complex meniscus tear and degenerative changes in the claimant's right knee. This same right knee complex meniscus tear and degenerative changes were also identified on the October 2020 subject post-injury MRI. In this rather unique situation, we are able to directly compare the October 2020 post-subject work incident MRI and the June 2018 MRI where the claimant herself admitted under oath she had not sustained any injury, and she could not and did not identifying [sic] symptom-precipitating event. Both the 2018 and 2020 MRIs reveal, as the physicians have noted, that there *is essentially no difference in the two (2) MRI scans*.

(Emphasis in original.) (Citations omitted.) The ALJ concluded that the medical records did not prove that the meniscus tear was “work-related in any way, or that it had not been both preexisting and symptomatic since at least June of 2018. The claimant has failed to establish the necessary causal connection between the September 23, 2020, work incident and her request for elective knee surgery.”

Hill appealed to the full Commission, which reversed the ALJ's decision. After its de novo review of the record, the Commission determined that Hill had a preexisting condition that was aggravated by her September 23 work accident.

Although it appears that the claimant had a right knee meniscus tear in 2018, this condition was largely asymptomatic and not severe enough to prevent the claimant from work. In fact, the one time the claimant experienced swelling in her right knee for which she sought treatment in June of 2018, lasted very briefly. According to the claimant's testimony, the swelling lasted for one day and she did not miss any work because of it.

However, following the accident the claimant suffered from more severe symptoms than those she experienced prior to this accident. As Dr. Barnes explained, “[the claimant's] acute injury from stepping in the hole seems to be what caused her to have significant symptoms therefore resulting in the need for arthroscopic treatment.”

Additionally, prior to the September 23, 2020, work accident, despite having a meniscus tear in her right knee, the claimant was able to work a manual labor position without restrictions. However, since this accident, the claimant has been placed on restrictions that limit her to sitting while performing her work duties. Based on these marked differences in the claimant's symptoms, it is clear that her workplace injury was at least a factor in the need for additional medical treatment. Therefore, we find that the recommended arthroscopic partial meniscectomy is reasonably necessary in connection with the claimant's compensable right knee injury.

Therefore, for the foregoing reasons, the Full Commission finds that the claimant proved by a preponderance of the evidence that she is entitled to medical treatment in the form of a right knee arthroscopic partial meniscectomy as recommended by Dr. Pearce.

The Commission also found that Hill was entitled to TTD benefits starting on 5 November 2020 and continuing until a date yet to be determined. ARDOT has timely appealed the Commission's decision.

We review the Commission's decision in the light most favorable to its findings and affirm when the decision is supported by substantial evidence. *Parker v. Atl. Rsch. Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission but whether reasonable minds could reach the result found by the Commission; if so, the appellate court must affirm. *Id.* It is the Commission's duty to make determinations of credibility, to weigh the evidence, and to resolve conflicts in medical testimony and evidence. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

ARDOT argues the Commission erred in finding that Hill proved by a preponderance of the evidence that an arthroscopic partial meniscectomy is reasonably necessary in connection with her compensable right knee injury. It also asserts that the

Commission “did not correctly review and analyze the medical evidence in this case in reaching its conclusion.” ARDOT contends that, based on the medical evidence, Hill has received all appropriate benefits to which she might be entitled relative to the 23 September 2020 incident.

In its argument, ARDOT reviews the medical evidence and highlights certain portions that are favorable to its position, such as the 9 October 2020 MRI report, which stated, “The meniscal tear has not significantly changed.” ARDOT emphasizes that “[n]o definite acute injury was documented as a result of the appellee stepping in a hole on September 23, 2020.” It also stresses Dr. Pearce’s mistaken belief that the June 2018 MRI was the result of an on-the-job injury and his opinion that “If 2018 is not O T J, then new dx is pre-existent.” ARDOT also notes Dr. Pearce’s opinion that if the 2018 flareup of knee pain was preexistent, then no other treatment was indicated for the 23 September 2020 incident and that Hill would be at MMI for the 23 September 2020 incident. Finally, ARDOT argues that the Commission’s opinion is based primarily on Hill’s self-serving, subjective testimony that she experienced more severe symptoms following the 23 September 2020 injury than she had previously. ARDOT insists that the medical evidence does not document that Hill sustained any new acute injury as a result of the September 23 incident.

An employer must provide for an injured employee such medical services “as may be reasonably necessary in connection with the injury received by the employee.” Ark. Code Ann. § 11-9-508(a)(1) (Supp. 2023). Moreover, “an employer ‘takes the employee as he finds him,’ and employment circumstances which aggravate pre-existing conditions

are compensable.” *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 464, 120 S.W.3d 150, 152 (2003) (quoting *Nashville Livestock Comm’n v. Cox*, 302 Ark. 69, 73, 787 S.W.2d 664, 666 (1990)). An aggravation of a preexisting, noncompensable condition by a compensable injury is, itself, compensable. *Williams v. L&W Janitorial, Inc.*, 85 Ark. App. 1, 145 S.W.3d 383 (2004).

The medical records show, and it appears the parties agree, that Hill had a preexisting meniscus tear in her right knee since at least June 2018, and importantly, the parties also agreed that Hill sustained a compensable injury to her right knee on 23 September 2020. ARDOT insistently argues that the September 23 injury was not a “new acute injury,” but that was not the Commission’s finding. The Commission found that Hill had a preexisting condition that was aggravated by the admittedly compensable September 23 injury, and ARDOT fails to challenge that finding on appeal. We hold that substantial evidence supports the Commission’s decision.

Affirmed.

KLAPPENBACH and BROWN, JJ., agree.

Robert H. Montgomery, Public Employee Claims Division, for appellants.

Robert Buckalew, for appellee.