

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DANIEL VARGAS,)
)
 Claimant,)
)
 v.)
)
 NORCO,)
)
 Employer,)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2002-520330

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

February 9, 2007

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Lora Rainey Breen. The parties provided stipulated facts and exhibits and declined a hearing. Lawrence G. Sirhall represented Claimant and E. Scott Harmon represented Defendants. The parties submitted briefs and the matter came under advisement on October 17, 2006.

ISSUE

The sole issue to be resolved at this time is whether and to what extent Claimant is entitled to ongoing medical treatment for his left knee.

CONTENTIONS OF THE PARTIES

Claimant contends he is entitled to ongoing medical treatment for his left knee patellofemoral problems. Physicians involved in this matter agree that the industrial accident

caused and/or aggravated the patellofemoral condition of Claimant's left knee. Moreover, it is undisputed that Claimant was asymptomatic prior to the accident, and has been symptomatic since the accident.

Defendants accepted liability for the meniscus tear in Claimant's left knee, but assert the work accident neither caused nor extended the pathology of his left knee patellofemoral condition, which pre-existed the accident. As such, Claimant is not entitled to ongoing medical benefits for the patellofemoral problems he is currently experiencing.

EVIDENCE CONSIDERED

The parties stipulated and agreed the following would constitute the entire record in this matter:

1. Stipulation of Facts filed September 22, 2006; and,
2. Exhibits A through J filed September 22, 2006. Exhibits H and I are the depositions of Drs. Michael Curtin and Kyle Palmer, respectively.

All objections made during the above noted depositions are overruled.

After having considered all of the evidence and the briefs of the parties, the Referee submits the following Findings of Fact and Conclusions of Law for review by the Commission.

FINDINGS OF FACT

The parties agree on the following facts¹:

1. Claimant was born on March 4, 1964 and, on the asserted date of injury was 38 years of age. Claimant asserts, and Defendants agree that Claimant suffered injury to his left knee, arising out of and in the course of his then existing employment with Norco, on September

¹ Findings of Fact 1 through 11 are a nearly verbatim recitation of the stipulated facts provided by the parties. Only minor, non-substantive changes have been made.

25, 2002.

2. Claimant suffered degenerative conditions about his left knee pre-dating his employment with Defendant Norco, but, as of the asserted date of injury, those pre-existing conditions were asymptomatic.

3. On September 25, 2002, Claimant was engaged in “kicking” oxygen-filled cylinders to move them into storage. Though the parties are uncertain as to the precise cylinders Claimant was moving on the asserted date of injury, the parties believe, and for purposes of this proceeding, stipulate and agree, that the cylinders were approximately 56” tall, 9-10” in diameter, and weighed 50-60 pounds. The process of “kicking” involves tilting the cylinder to the side with just the bottom edge of the cylinder resting on the ground, resting the top of the cylinder in the hand, and pushing the bottom of the cylinder with either the ball or the medial aspect of the foot to cause the cylinder to roll forward on its bottom edge.

4. Claimant informed his employer of the asserted injury on September 26, 2002, as set forth in Exhibit A, Notice of Injury.

5. On September 27, 2002, Claimant first presented for medical care regarding his left knee. The history given by Claimant is set forth in Exhibit B, the September 27, 2002, records of St. Luke’s Meridian Medical Center Occupational Health Services.

6. The exact nature of Claimant’s injuries and the course of his subsequent medical care is set forth in the medical records contained in the stipulated Exhibits.

7. Claimant’s treating physician, Kyle Palmer, M.D., took Claimant to surgery on October 16, 2002, performing a left knee partial medial meniscectomy and left knee trochlear chondroplasty.

8. On or about November 14, 2002, Dr. Palmer released Claimant to full duty work

and Claimant returned to full activities. On January 16, 2003, Dr. Palmer opined Claimant had achieved maximum medical improvement (MMI) and rated a 2% of the lower extremity PPI. No permanent restrictions were imposed.

9. In May 2003, and unrelated to his employment at Norco, Claimant performed landscaping installation work at the home of Mr. Ned Pontius, an officer of Norco. The photographs set forth in Exhibit C are true and correct photographs of Claimant performing work in Mr. Pontius' yard. Claimant did not report any significant or traumatic injury to his left knee while performing this work.

10. Since September 25, 2002, Claimant has reported no additional significant injury or trauma to his left knee.

11. Since the October 16, 2002, surgery by Dr. Palmer, Claimant has continued to suffer pain and discomfort in his left knee. The precise nature of Claimant's ongoing complaints is set forth in the medical records included as exhibits.

The Referee makes the following additional findings:

12. Claimant's ongoing left knee problems are patellofemoral in nature and the current recommended treatment relates to these patellofemoral problems. The patella is commonly known as the kneecap.

13. There are four physicians with notable involvement in this matter: orthopedic surgeon Kyle Palmer, M.D. (initial treating orthopedist); orthopedic surgeon Michael Curtin, M.D. (doctor arranged by Defendants for a second opinion who subsequently treated Claimant); orthopedic surgeon George Nicola, M.D. (IME doctor); and, orthopedist Andrew Curran, D.O. (doctor from whom Claimant sought "fourth opinion" and who also briefly treated Claimant).

14. Dr. Palmer, who performed Claimant's left knee surgery, described his findings at

surgery as a medial meniscus tear, chondromalacia of the medial condyle, condyle defect in the trochlea, and chondromalacia of the patella. According to Dr. Palmer, the meniscus tear was directly caused by the industrial accident and the other conditions, which are patellofemoral in nature, pre-existed the accident. The Referee finds that, while Dr. Palmer's opinions appear equivocal at times, he essentially believes the industrial accident aggravated Claimant's pre-existing patellofemoral problems. Of significance to him in this regard is the fact that Claimant was asymptomatic prior to the accident. As to whether the aggravation was temporary or permanent, he replied, "I don't know that I could say that the aggravation to his degeneration would have been permanent or not. I think at least temporary." Palmer Depo. (Exhibit I), p. 26.

15. Dr. Curtin, who saw Claimant primarily in April and May 2003, and then again in January 2004 and January 2006, has consistently opined that Claimant's ongoing symptoms probably stem from the chondral defect/lesion described by Dr. Palmer at surgery and seen in the arthroscopic photographs. On April 3, 2003, Dr. Curtin first saw Claimant and noted persistent left knee pain and swelling almost six months post-surgery. Following his physical examination and review of radiographs and the surgical photos, he concluded: "I told Dan, in my opinion, his symptoms in his knee likely stem from the full thickness chondral lesion of the trochlea/medial femoral condyle. I told him such lesions can cause aching pain, swelling, and some inhibition of activities." Exhibit E. Dr. Curtin characterized the diagnosis as "unfortunate," noted there was no magical solution for it, and suggested Claimant consider living with the symptoms for the time being. He indicated that possible surgical intervention in the form of a microfracture or OATS procedure could be attempted, but would involve prolonged rehabilitation. In follow-up correspondence on April 15, 2003, Dr. Curtin opined the chondral lesion was "more than likely" related to the September 25, 2002 injury. *Id.*

FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION - 5

16. In his deposition, Dr. Curtin again reviewed Dr. Palmer's surgical photos and noted that the chondral lesion appeared "relatively fresh because it's filled with a hemorrhagic [sic] bloody-appearing tissue which would be relatively acute in nature." Curtin Depo. (Exhibit H), p. 29. When asked what physics were involved in the kicking of the cylinders to support a finding that the chondral lesion was related to the 2002 event, Dr. Curtin replied:

The full thickness chondral lesion, we think those tend to be traumatic. And we think those can happen either via compression or via shear.

So what we're talking about is a chondral lesion that is on the end of the thigh bone in the area where the kneecap or the patella reciprocates on the end of the thigh bone. The two cartilage surfaces rub together.

So one could have an impact injury whereby an impact to the front of the patella or the kneecap could cause a full thickness chondral lesion. Or one could have a shear injury where perhaps the limb itself was twisted and the kneecap shifted on the thigh bone, thus causing a shear injury and causing the cartilage defect.

So I think the cartilage defect can happen by either of those two mechanisms. I don't know which one was at play here.

Id. at 30-31. Dr. Curtin also explained that a chondral injury tends to be painful on a delayed basis and is usually accompanied by a fair amount of swelling. Regarding pre-existing arthritic conditions in Claimant's left knee, Dr. Curtin stated: "The things that likely happened with his work-related injury and were noted at the time of his surgical intervention with Dr. Palmer would serve to accelerate an underlying process that, yes, I believe he has." *Id.* at 24-25.

17. Dr. Nicola saw Claimant for an IME on March 18, 2004. He concluded: "I think the patient has significant degenerative changes in both knees, which unfortunately are more symptomatic and were made worse by his kicking the cylinder on the left knee and aggravated his symptoms. Perhaps, I can attribute his radial tear of the cartilage to that problem." Exhibit F. He noted the degeneration was greater on the left than on the right. He found Claimant not

medically stable and suggested he may need another arthroscopy with microfracture as proposed by Dr. Curtin. However, given the degenerative conditions in both knees, he recommended Claimant pursue treatment of his arthritis on a non-industrial basis.

18. Claimant saw Dr. Curran from April through December 2004, and received anti-inflammatory medications and a course of injections with only temporary relief. As to the source of Claimant's problems, Dr. Curran agreed the symptoms stemmed from the patellofemoral joint and opined the work-related injury did not cause the articular cartilage injury, but indirectly the patellofemoral symptoms were likely exacerbated by the meniscal injury and surgery.

DISCUSSION AND FURTHER FINDINGS

1. **Medical Benefits.** An employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or disability from an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432 (1). It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make of the physician's decision is whether the treatment is reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989).

Claimant requests medical treatment related to his ongoing patellofemoral problems. All four physicians listed above have opined, in one way or another, that Claimant's pre-existing patellofemoral degeneration was exacerbated, aggravated, or accelerated by the industrial injury. Given the absence of symptoms prior to the injury and the consistent presentment of symptoms following the surgery, the Referee finds that the effect of the injury on Claimant's patellofemoral

ATTEST :

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the __9__ day of February 2007, a true and correct copy of the foregoing **Findings Of Fact, Conclusion Of Law, And Recommendation** was served by regular United States mail upon each of the following persons:

LAWRENCE G SIRHALL
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jkc

/s/

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

DANIEL VARGAS,)
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 Claimant,) **IC 2002-520330**
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 v.)
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 NORCO,)
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 Employer,)
) **ORDER**
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 LIBERTY NORTHWEST)
 INSURANCE CORPORATION,)
) February 9, 2007
 Surety,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Lora Rainey Breen submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

1. Claimant is entitled to ongoing medical care, to include surgery, for his left knee patellofemoral problems.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 9 day of February, 2007.

INDUSTRIAL COMMISSION

/s/ _____
James F. Kile, Chairman

_____/s/_____
R. D. Maynard, Commissioner

_____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of February , 2007, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

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_____/s/_____