

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PATRICIA JORDAN,)
)
 Claimant,)
)
 v.)
)
 KOOTENAI MEDICAL CENTER,)
)
 Employer,)
)
 and)
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2003-516197

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

Filed: August 11, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d’Alene on February 3, 2009. Claimant, Patricia Jordan, was present in person and represented by Harold B. Smith, of Coeur d’Alene. Defendant Employer, Kootenai Medical Center, and Defendant Surety, Liberty Northwest Insurance Corporation, were represented by E. Scott Harmon, of Boise. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on June 10, 2009.

ISSUE

The issue to be decided is whether Claimant is entitled to a total knee replacement due to her industrial injury.

CONTENTIONS OF THE PARTIES

Claimant asserts she is entitled to a total right knee replacement due to her 2003 industrial accident. She relies upon the opinion of Douglas McInnis, M.D. Defendants argue that a total knee replacement is not indicated and that Claimant has failed to produce medical evidence to support her request.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The testimony of Claimant taken at the February 3, 2009, hearing;
3. Claimant's Exhibit 1, Bates numbered pages 1 through 481 and 485 through 491, admitted at the hearing;
4. Defendants' Exhibits A through P, admitted at the hearing;
5. The post-hearing deposition of Douglas P. McInnis, M.D., taken by Claimant on March 12, 2009; and
6. The post-hearing deposition of Spencer D. Greendyke, M.D., taken by Defendants on March 20, 2009.

All objections posed during the deposition of Dr. McInnis are overruled. Defendants' Motion to Strike portions of Claimant's opening brief is denied.

After having considered the above evidence, and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1946 and was 62 years old at the time of the hearing. She has resided in Coeur d'Alene for the last 12 years. For approximately 36 years she has worked in various aspects of nursing.

2. Claimant obtained her registered nursing degree in 1989. She worked as a registered nurse in a Santa Fe hospital for 11 years in both the ICU and CCU units. Claimant then worked at a Boise hospital for 18 months before moving to Coeur d'Alene. In Coeur d'Alene Claimant worked at several medical facilities including seven years at Kootenai Medical Center.

3. On July 29, 2003, Claimant was working for Kootenai Medical Center when she caught her foot on the strap of a large purse or bag and fell upon her bent right knee. Claimant landed on her right patella causing a quarter-sized abrasion on the medial side of her right knee. She landed on commercial carpet, without padding, laid over concrete. A co-worker witnessed Claimant's fall. Claimant reported her fall to her supervisor.

4. Claimant noted swelling over her right patella which increased over the next day or so. Claimant presented to Charles Foe, M.D., at the Kootenai Medical Center emergency room. He ordered x-rays, encouraged her to ice her knee, and released her from work for the rest of the day. The x-rays revealed no fracture. Claimant was seen on several additional occasions at the Kootenai Medical Center emergency room. On August 4, 2003, Claimant presented to Warren Keene, M.D. He noted a history of osteoarthritis. On January 28, 2004, Claimant was examined by Robin Shaw, M.D., who ordered an MRI that showed a lateral meniscus tear.

5. On April 6, 2004, Roger Dunteman, M.D., performed arthroscopic surgery including a right lateral partial meniscectomy and chondroplasty of the patella. Claimant participated in physical therapy thereafter, but continued to complain of right knee pain. Claimant received multiple cortisone injections in her right knee. Thereafter Claimant saw a series of physicians including Stephen Sears, M.D.

6. On December 27, 2004, Dr. Sears examined Claimant and recommended she be restricted to six months of light-duty work due to her industrial injury. He did not recommend

further surgery. After six months of light-duty, Claimant was still having problems with her right knee in the form of limping, medial pain, and buckling.

7. In 2005 Dr. Wiesenhutter diagnosed Claimant with osteoarthritis in her lower back and her right knee. In May 2005, Neil Nemecek, M.D., took over Claimant's primary care.

8. Claimant has not worked since approximately July 2005. In approximately 2006 Claimant applied for long-term disability. She also applied for Social Security disability.

9. On May 21, 2008, Claimant presented to orthopedic surgeon Spencer Greendyke, M.D. Dr. Greendyke found medial joint line tenderness and diagnosed a probable medial meniscus tear. An MRI revealed a possible torn medial meniscus and a meniscal cyst on the medial side. On June 17, 2008, Dr. Greendyke performed arthroscopic surgery. He found a posterior horn tear of the medial meniscus, a lateral meniscus tear, and a meniscal cyst in the front medial side. Dr. Greendyke removed the cyst and dressed the meniscal tears.

10. At the time of hearing, Claimant was receiving approximately \$1,200 per month in Social Security Disability. She has not applied for work anywhere since she began receiving Social Security benefits. She is also receiving Medicare benefits. Claimant testified she has not recovered from her 2003 injury. She testified she had no problems with her left knee, only with her right knee. Claimant asserted that subsequent to her second surgery, her right knee has collapsed and her knee is now bone on bone. She testified that in spite of exhaustive physical therapy, her right knee will not fully extend.

DISCUSSION AND FURTHER FINDINGS

11. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however,

need not be construed liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

12. **Total knee replacement.** The sole issue to be decided is whether Claimant is entitled to total knee replacement surgery. This presents a narrowly focused question of Claimant's entitlement to specific additional medical care. 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 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 Section 72-432(1). However, the employer is only obligated to provide medical treatment necessitated by the industrial accident. A claimant must prove that an alleged injury results from an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

13. In the present case, even assuming that Dr. McInnis presently opines a total knee replacement surgery is required or needed, the crucial inquiry is whether Claimant's alleged need for a total knee replacement was caused by her July 29, 2003, industrial accident. Defendants contend that Claimant has not produced the requisite medical evidence.

14. Dr. Greendyke visualized Claimant's lateral and medial right knee compartments during the 2008 arthroscopy and found grade one and two chondromalacia in all areas except for grade two and three on the knee cap. He found no bone on bone condition anywhere in Claimant's right knee. Dr. Greendyke noted that Claimant wanted to have a total knee replacement and referred Claimant to Dr. McInnis for evaluation of possible total knee replacement. However, Dr. Greendyke emphasized that he did not recommend Claimant undergo a total knee replacement.

15. Dr. McInnis examined Claimant on October 8, 2008. He noted that much of Claimant's objective pathology evident since her work injury was localized to the lateral side of her knee, including her original lateral meniscus tear, while much of her subjective pain has always been medial to the left side of her knee. This discrepancy was also recognized by Dr. Greendyke, Dr. Dunteman, and others. Dr. McInnis testified that Claimant has significant objective evidence of arthritis in her right knee based upon MRIs and previous arthroscopic pictures. He noted that prior to her industrial accident; Claimant had been diagnosed with osteoarthritis and fibromyalgia. He further noted that Claimant had been treated largely conservatively for five years but continued with limiting symptoms and opined that Claimant would benefit from a total knee replacement. Dr. McInnis testified that the recommendation for total knee replacement was an option for treatment of Claimant's arthritis. He agreed that his recommendation of a total knee replacement was cautiously worded. Dr. McInnis noted that Claimant has had lateral knee pain, but her more severe, ongoing, chronic, reproducible pain had been medial pain. Dr. McInnis noted that sometimes lateral arthritis causes medial knee pain, and considering that Claimant had experienced temporary pain relief from cortisone knee injections, that her knee pain would likely improve if she had a total knee replacement. Critically, Dr. McInnis avoided offering an opinion as to whether Claimant's alleged need for a

total knee replacement was related to her industrial accident of July 29, 2003. McInnis Deposition, pp. 25-26.

16. There is no medical evidence establishing that Claimant's alleged need for a total knee replacement is caused by her 2003 industrial accident. Claimant has failed to prove her entitlement to a total knee replacement.

CONCLUSION OF LAW

Claimant has not proven her entitlement to a total knee replacement.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusion of law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 30th day of July, 2009.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2009, 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:

HAROLD B SMITH
PO BOX 2083
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E SCOTT HARMON
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BOISE ID 83707

sc

_____/s/_____

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ORDER

Filed: August 11, 2009

Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended 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 has not proven her entitlement to a total knee replacement.
2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 11th day of August, 2009.

INDUSTRIAL COMMISSION

/s/ R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2009, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

HAROLD B SMITH
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