

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOHN CHAPMAN,

Claimant,

v.

TRINITY HEALTH CORPORATION,

Self-Insured Employer,

Defendants.

IC 2011-012506

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

Filed June 19, 2013

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on September 21, 2010. Claimant was present and represented by Richard S. Owen of Nampa. James A. Ford of Boise represented Employer and its Surety. Oral and documentary evidence was presented and the parties took two post-hearing depositions. The parties then submitted post-hearing briefs and this matter came under advisement on December 24, 2012.

ISSUES

The issues to be decided are:

1. Whether the need for Claimant's total knee arthroplasty (TKA) was hastened by the permanent aggravation of his pre-existing arthritic condition arising from his May 18, 2011 industrial accident;
2. Whether Claimant's Peyronie's disease was caused by the traumatic removal of a catheter placed during his TKA surgery;
3. Whether and to what extent Claimant is entitled to the following benefits:

- a) Total temporary disability (TTD);
 - b) Permanent partial impairment (PPI);
 - c) Permanent partial disability (PPD);¹
- 4. Whether apportionment pursuant to Idaho Code § 72-406 is appropriate; and
 - 5. Whether the Commission should retain jurisdiction beyond the statute of limitations.

CONTENTIONS OF THE PARTIES

On May 18, 2011, Claimant injured his left knee while transporting a patient from his bed to an examining table. He contends this industrial injury permanently aggravated his pre-existing osteoarthritis to the extent that the need for his TKA was hastened. Claimant further argues that he suffered a penile injury (Peyronie's disease) when a catheter was traumatically removed at or about the time of his left total knee arthroplasty (TKA) surgery. Claimant seeks reimbursement for the TKA procedure, medical treatment for his penile injury, time loss and impairment benefits, and retention of jurisdiction.

Defendants contend that Claimant's pre-existing osteochondritis dissecans (OCD) in his left knee set him up for an eventual TKA and that his industrial accident was merely a temporary aggravation of that underlying condition. Regarding Claimant's Peyronie's disease, the only medical care provider who was in the OR during the TKA testified that she did not cause or observe any traumatic removal of Claimant's catheter. Therefore, Claimant's urologist's reliance on a traumatic removal is misplaced.

Based thereon, Claimant is entitled to no further workers' compensation benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

¹ Claimant concedes that he has no PPD due to his accident, and that issue is deemed abandoned.

1. The testimony of Claimant, Claimant's wife Ruth Chapman, Claimant's sister Debbie Zeigler, R.N., and Katherine Green, R.N.

2. Claimant's Exhibits 1-3, admitted at the hearing.

3. Joint Exhibits A-DD, admitted at the hearing.

4. The post-hearing deposition of Andrew Curran, M.D., taken by Claimant on October 3, 2012.

5. The post-hearing deposition of Brian Tallerico, D.O., taken by Defendants on October 10, 2012.

Defendants' objections at pages 61 and 68 of Dr. Tallerico's deposition are sustained. All other objections are overruled.

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

FINDINGS OF FACT

1. Claimant was 52 years of age and resided in Nampa at the time of the hearing. For much of his life, Claimant, along with his brother, farmed about 450 acres north of Nampa. Claimant summarized his work as a farmer at hearing as follows:

Yeah. I was - - I was in a field all the time and my brother and I got a good partnership, he did a certain amount of tractor work and I did a lot of the leg work and I did most of the irrigating and running errands and working on equipment and I ran detassling corn crews for the first part of the - - my life, even when I was younger.

Hearing Transcript, p. 20.

2. Claimant quit farming as the result of a neck injury requiring surgery in 2000. His treating neurosurgeon suggested that he find another line of work, so Claimant obtained a bachelor's degree in computer tomography (meaning he is a CAT scan operator as well as an X-

ray technician) from BSU around 2005. Claimant started with Employer herein on an as-needed basis, but went full-time in 2008. He worked from 9:30 at night until 6:30 in the morning, four days a week.

3. Claimant underwent left knee surgery in 1964 when he was 14 years of age.² However, he testified that he had no major left knee problem during the 35 years he farmed, other than an intermittent “zing type deal in it” that would resolve. Hearing Transcript, p. 21. Claimant’s left knee never kept him from working.

4. Prior to his industrial injury, Claimant began having left knee pain when climbing stairs or using a clutch. He casually discussed his pain with Andrew Curran, M.D., an orthopedic surgeon practicing in the same facility where Claimant worked. In November 2010, at Dr. Curran’s suggestion, Claimant met with him in his office. Claimant brought bilateral knee X-rays to show Dr. Curran, and Dr. Curran obtained the following history:

A. So he told me at that time he had been having problems with his knees for many years, and he had had surgery on his knee at age 14, and his symptoms were aggravated with stairs and pushing in on his clutch on his car. Not much discomfort with walking, pain was located on the medial side of his knee, and he had used some orthotics as a treatment for it.

Q. What did your examination of his left knee reveal?

A. So on his exam I noted he had a genu varum deformity,³ he had a scar on the medial side of his knee from prior surgery, he had some mild crepitation behind his kneecap, no instability, and his neurovascular exam was intact.

Dr. Curran Deposition, p. 6. Claimant testified that Dr. Curran gave him some treatment options including visiting web sites regarding a new injection material to take the irritation out of the knee.

² This surgical procedure will be discussed in more detail, below.

³ Dr. Curran defined a genu varum deformity as a somewhat misaligned knee usually seen with arthritis.

5. Claimant explained at hearing that he had problems with his knees every five or ten years; however, because no physician was ever able to figure out the cause of his pain, he never received any treatment for his knee or knees after his surgery in 1964. He did have occasional pain in his left knee when climbing stairs and clutching. He testified that orthotics helped him with balance due to problems with his feet which, in turn, helped his knees. According to Claimant, he did not return to Dr. Curran for treatment for his left knee because neither he nor Dr. Curran thought he needed any.

6. On May 18, 2011, Claimant suffered the subject industrial accident that he described as follows:

I was working with a patient about - - late in the shift, probably about 3:00, 3:30 in the morning, and I was pulling a patient across the - - from the scanner table back to his bed on the slider board and the scanner table has a little bit of an indentation in it, so you have to really - - the first pull is really hard to get it started over the top of the indentation to get it onto the bed and I put myself up against the bed I was bringing it towards [me] and you straighten your leg out really straight and brace yourself and start pulling across and, then, as you do that you bring your knee in underneath the bed and come across to keep you from falling.

* * *

Q. (By Mr. Ford): Now, you described what happened in the accident of May 18, 2011, and I want to make sure that I'm clear. What occurred to your knee was you took some weight on your knee as you were pulling the person on the slider board, you were initially in a flex position, it went into an extended position and it was then you felt an abnormal pain condition; correct?

A. No. You got it backwards. It was in an extended position and you go into a flex position.

Q. Okay. What I want to make sure is there was no twist to your knee in that process.

A. Not that I know of.

Hearing Transcript, pp. 19, 84-85.

7. Claimant experienced immediate symptoms after his accident:

Q. (By Mr. Owen): Okay. Now, by the time you left your - - your shift how was your left knee?

A. I couldn't hardly stand on it.

* * *

Q. Okay. These symptoms you had after your injury on May 18, of 2011, were those anything like the symptoms you experienced before in your left knee?

A. Never.

Q. How were they different?

A. It swelled terribly and I could see a deformity and it hurt - - I mean - - there was a lot of pain.

Q. Okay. Had you ever experienced pain like that in your left knee before?

A. The only time I ever did was when I was about 14, just shortly after surgery, probably the worst pain I have had - -

Q. Okay.

A. - - prior to that.

Hearing Transcript, pp. 41-42.

8. After a failed attempt at conservative treatment including the use of crutches, physical therapy, a steroid injection, and light duty work, Claimant underwent a left TKA on August 8, 2011 by Dr. Curran.

9. Claimant testified that he had a good result from his TKA. His only related permanent restrictions prevent him from running or participating in impact sports, activities in which Claimant never participated prior to his industrial injury, in any event.

10. After observing Claimant's demeanor at hearing and comparing his testimony with other relevant evidence, the Referee finds that Claimant is a credible witness.

DISCUSSION AND FURTHER FINDINGS

CAUSATION

The question presented in this case is whether or not Claimant's industrial accident permanently aggravated his preexisting osteoarthritis to the extent that the need for his TKA was hastened or accelerated. The permanent aggravation of a pre-existing condition is compensable. *Bowman v. Twin Falls Construction Company, Inc.*, 99 Idaho 312, 581 P.2d 770 (1978).

The fact that Wynn's spine may have been weak and predisposed him to a ruptured disc does not prevent an award since our compensation law does not limit awards to workmen [or women] who, prior to injury, were in sound condition and perfect health. Rather, an employer takes an employee as he [or she] finds him [or her]. *Wynn v. J.R. Simplot Company*, 105 Idaho 102, 104, 666 P.2d 629, 631 (1983).

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). "Probable" is defined as "having more evidence for than against." *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, *Jensen v. City of Pocatello*, 135 Idaho 406, 412-413, 18 P.3d 211, 217-218 (2001). An employee may be compensated for the aggravation or acceleration of a pre-existing condition, but only if the aggravation results from an industrial accident as defined by Idaho Code § 72-102(17). See, *Nelson v. Ponsness-Warren Idgas Enterprises*, 126 Idaho 129, 132, 879 P.2d 592, 595 (1994). A physician's testimony is not required in every case, but his or her medical records may be utilized to provide "medical testimony." See, *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

11. Andrew Curran, D.O.: Dr. Curran, Claimant's treating knee surgeon, has provided his opinion as to the etiology of Claimant's left knee condition on a number of occasions.

a. On July 20, 2011, Dr. Curran responded to a letter from Surety:

- 1) I believe that he likely suffered a twisting type injury on 5/18/2011 that aggravated pre-existing arthritis in his knee.
- 2) I treated him with cortisone injection which gave him some temporary relief. I do believe a total knee arthroplasty will ultimately be required to adequately treat his symptoms.
- 3) His modified work restrictions are due to the twisting injury that exacerbated his arthritis.
- 4) I believe that the arthritis is currently contributing to the majority of his symptoms and need for surgery at this point.

Exhibit A, p. 195.

b. In response to another letter from Surety dated July 27, 2011, Dr. Curran, in handwriting, answered "yes" to the following convoluted question: "Would you not agree that the industrial injury was a temporary aggravation of a pre-existing condition without any permanency?" Exhibit A, p. 199.

c. In an August 31, 2011 letter responding to Claimant's counsel's inquiries regarding causation, Dr. Curran wrote:

I feel that Mr. Chapman had pre-existing bone on bone arthritis involving his knee. His MRI did show degeneration of the meniscus. I do not feel that this twisting injury led to the meniscus tear. I also do not feel that this twisting injury led to the arthritis. I do believe that the twisting injury did aggravate his arthritis thereby causing it to become symptomatic. Per the patient he apparently did not have symptoms to this knee prior to this twisting injury. If the patient had never had any twisting injury the question is whether or not his arthritis would have eventually become symptomatic and that is very difficult to answer. My suspicion is yes.

The other question is did the twisting injury cause the arthritic knee to become symptomatic sooner and the answer is most likely.

Exhibit A, p. 217.

d. On October 20, 2011, Dr. Curran responded to an eight-page letter from Defendants' counsel providing additional information that was not previously available to him. Dr. Curran was asked to "agree" or "disagree" with certain assertions and propositions and was given the opportunity to provide comments. The assertions and propositions involved various versions of the industrial accident and injury that Claimant has given at different times. None of the versions specifically mentions a twisting type movement of his left knee. Dr. Curran agreed that Claimant was exhibiting symptoms of left knee stiffness and pain as of February 28, 2011, as noted in Dr. Hansen's records. (See Exhibit A, p. 178). He also acknowledged that he had previously agreed (in his July 27, 2011 letter to Surety) that Claimant's accident was only a temporary aggravation of his preexisting osteoarthritis. Significantly, Dr. Curran agreed, without comment, with the Surety's memorialization of his September 23, 2011 meeting with Defendants' counsel and related queries:

During our meeting on September 23, 2011, you indicated you discussed Mr. Chapman's case with his attorney, Richard Owen, at some point in the recent past. When I received a copy of the Saltzer file, I saw your letter to Mr. Owen of August 31, 2011. In your letter to Mr. Owen you stated the opinion Mr. Chapman had pre-existing bone on bone arthritis involving his left knee. You also confirmed an MRI taken on May 27, 2011 showed degeneration of the meniscus. In your letter, you stated you did not feel the twisting injury led to the meniscus tear and it did not lead to arthritis. You stated a belief the twisting injury aggravated the arthritis causing it to become symptomatic. You stated also Mr. Chapman reported he did not have symptoms in the knee prior to the twisting injury, and if you had to answer the question if he had never had the twisting injury, would he have eventually become symptomatic, you expected the answer would be yes. You also stated that the twisting injury most likely caused the arthritic knee to become symptomatic sooner. It is my understanding that you may not recall your November 18, 2010, evaluation of Mr. Chapman when you prepared your letter for Mr. Owen, and I understand further you did not have Dr. Hansen's report from the physical on February 28, 2011.

With this additional medical information, and information concerning how Mr. Chapman described this incident, I am hopeful that you can assist the parties and the Industrial Commission in evaluating the case by stating your opinion on the causation issue once again by considering these propositions:

Is it your medical opinion that Claimant's pre-existing arthritic condition in the left knee was temporarily aggravated by the May 18, 2011 [sic], injury, and the injury did not hasten the need for the TKA? ["Agree" box checked].

Is it your medical opinion that Claimant's May 18, 2011, injury aggravated his pre-existing arthritic condition in the left knee and hastened the need for the TKA? ["Agree" box checked] with the following handwritten comment: *His twisting injury likely hastened the need but I believe he would have needed a TKA @ some point regardless.*

Exhibit A, pp. 227-228. Emphasis added.

12. Dr. Curran was deposed by Claimant on October 3, 2012. He is an orthopedic surgeon practicing in Nampa since 2000 who specializes in shoulder and knee surgeries. Dr. Curran was acquainted with Claimant through their mutual employer, Trinity Health Corporation and they would visit occasionally.

13. Although Claimant testified that his injury was more of an extension/flexion-type injury rather than a twisting injury, Dr. Curran believed it was a twisting injury. At his deposition, Dr. Curran testified as follows regarding his understanding of the mechanism of Claimant's injury:

A. Well, the injury is basically - - what I figured happened is he put an increased load on an arthritic knee. So that when you no longer have any cushion and the bone is pushing on bone and you have an increased load pushed on it, it's going to cause pain swelling, just like he experienced.

Q. (By Mr. Owen): If we assume that the mechanism of injury, Doctor, and the same findings that you saw on x-ray, how does that create symptoms? How does the extra load and going through the range of motion, how is that going to cause symptoms? What happens in the knee?

A. Well, when you have no cushion in the knee and you have bone rubbing on bone with an increased load, you can cause bruising to the bone, which can result in pain, you can cause inflammation with the knee and that causes swelling, which results in pain as well.

Q. So these are two hard surfaces. Is there going to be friction in between those surfaces?

A. Correct.

Q. And a disturbance on the manner in which they meet?

A. Right.

Dr. Curran Deposition, p. 13.

14. Dr. Curran does not believe that Claimant tore his meniscus in his accident because it was already macerated by that time. Dr. Curran described the maceration as “. . . completely degenerative and no longer functioning as a normal meniscus.” *Id.*, p. 14. Dr. Curran identifies Claimant’s pre-existing arthritis, not the meniscus, as his primary pain generator.

15. Dr. Curran testified that it is standard orthopedic practice not to recommend a TKA unless both X-ray findings and symptomatology are present. Here, Dr. Curran recommended TKA because Claimant’s X-rays demonstrated severe OCD damage and Claimant had significant debilitating pain.

16. Dr. Curran was asked to assume that Claimant’s injury did not involve twisting, as Dr. Curran had previously indicated, if that assumption would change his opinions regarding causation. He answered:

A. Well, you can have - - when you hyperextend, there is a component of the femur and the tibia that pivot on one another, so you can still have twisting occur in that setting.

Q. (By Mr. Owen): Is the operative problem here the fact that Mr. Chapman was weightbearing and felt the pop in his knee as he went through the range of motion?

A. I think basically he had an increased load placed on his knee as he was transferring over, and that increased load caused it to kind of shift bone on bone and that aggravated his condition, yes.

Id., p. 19.

17. Brian Tallerico, D.O. Defendants retained Dr. Tallerico, an orthopedic surgeon, to review Claimant's medical records and provide a causation opinion.⁴ In addition to medical records dating back to 1963 and diagnostic films,⁵ Dr. Tallerico reviewed Claimant's deposition transcript and recorded statement to Surety. Dr. Tallerico generated a report dated April 29, 2012 and provided deposition testimony on October 10, 2012.

18. Dr. Tallerico was aware of Claimant's pre-existing osteochondritis dissecans and resultant surgery at age 14 as well as his pre-existing pseudogout; both of which can lead to degeneration and the need for a TKA. He also noted in his report that Claimant experienced stiffness and knee pain in 2008 (Dr. Hansen) and again in November 2010 (Dr. Curran).

19. Dr. Tallerico opined, on a more probable-than-not basis, that Claimant's left knee sprain/strain was related to the industrial injury of May 18, 2011. However, he concluded that it only temporarily aggravated his pre-existing left knee condition and did not hasten the need for surgery. See Exhibit W, pp. 6-7.

20. Dr. Tallerico also opined that Claimant would have needed a TKA even in the absence of his May 18, 2011 accident, and that Claimant would have been expected to reach maximum medical improvement three months following his accident, at the latest:

He had a bad knee and he was obviously diagnosed with a pre-existing bad knee and he injured that knee.

We don't dispute the fact that he did have an incident at work where he re-injured the knee and he could have aggravated that bad knee, that trick knee, or whatever you want to call it, temporarily.

In other words, suppose it was a perfect knee, it would have been a simple strain and maybe would have resolved in two days, five days. Who knows? Again, it's hard to predict. But it may have aggravated that bad knee to where it

⁴ Dr. Tallerico did not examine Claimant. Claimant already had his TKA at the time, so he did not believe a physical examination would have added anything. Had the question been whether or not a TKA was needed, a physical examination would have been more helpful.

⁵ Dr. Tallerico viewed the actual X-ray films from November 2010 and May 2011.

was more symptomatic for a couple of days or a couple of weeks. Maybe longer than if it was a perfect knee.

But as far as permanence and necessitating further treatment, no.

Id., p. 44. Consequently, Dr. Tallerico further opined that Claimant has incurred no PPI as a result of his industrial accident and no permanent restrictions.

21. Dr. Tallerico testified that Claimant's pre-existing OCD was a significant contributing factor in the development of his severe DJD and Claimant was a candidate for a TKA in November 2010 when he saw Dr. Curran. Dr. Tallerico does not believe Claimant's industrial accident hastened the need for that procedure:

I do (have an opinion). And that, obviously, is the crux of this discussion and this claim. And the way I like to think of these questions when they're asked of me of these types of issues, whether it's a knee or other body part in the industrial setting, is, if you look at the big picture, and if you do give the benefit of the doubt to the individual, there has to be some support for that.

And the support I would - - if we look at the other side of the coin, again, it would be as if Mr. Chapman really had no history of any knee problems and never really got evaluated for any knee problems.

Injured his knee at work, had x-rays that showed severe arthritis and was unable to recover to his baseline and had multiple treatments and ended up with a knee replacement, I would agree that's hard to argue that he was asymptomatic. He never had knee problems, but he did have x-ray findings that he never knew he had toward this injury. So, I look at the flip side that way.

It doesn't happen in this case or this claim because he has a well documented history of knee problems. He has a thorough, appropriate orthopedic examination in November of 2010 prior to this injury where, basically, he was there and he was a total knee replacement candidate at that time.

The natural history of osteoarthritis of any joint is a waxing and waning. You don't have to have pain 24 hours a day, seven days a week for 30 years. It's waxing and waning.

It was severe enough in November of 2010, appropriately so, not faking or anything, he went and got evaluated for a bad knee that could have been replaced then, but he decided against it. He decided against any treatment for it, as I recall.

Q. At that appointment - -

Well, then what is the basis for your conclusion that he then - - that this incident didn't hasten the need?

A. Because he already had the need. He had all the boxes checked, if you will. He had the symptoms, he had the x-ray findings, he had the alignment, he had the physical exam findings. I mean, he's the classic total knee arthroplasty patient.

Q. In November of 2010?

A. In November of 2010.

Id., pp. 48-50.

22. Dr. Tallerico found Dr. Curran's findings from Claimant's November 19, 2010 visit with Dr. Curran significant:

He saw Dr. Curran on November 19, 2010. He reported a history of problems with his left knee for many years.

Surgery when he was 14.

Symptoms were worse when he was using - - going up stairs or using a clutch.

He was describing a medial pain, which is the inside portion of the knee and that's where his osteochondritis dissecans - - I'll say "OCD," if we can use that term from here on out - - osteochondritis dissecans - - his OCD lesion was on the medial side.

Dr. Curran noticed that he had varus alignment, which means he was bowlegged. And, again, a medial compartment collapse would lead to somebody being bowlegged.

X-rays [*sic*] he did have crepitation, which is grinding and popping of the knee. And x-rays were taken showing near bone-on-bone in that medial compartment.

His diagnosis at that time was osteoarthritis, which is osteochondritis, which is degenerative joint disease of the knee.

Dr. Tallerico Deposition, pp. 30-31.

23. Dr. Tallerico described the significance of the "bone-on-bone" findings on the November 2010 x-rays as follows:

Near bone-on-bone means almost end stage osteoarthritis or degenerative joint disease.

Cartilage doesn't show up on x-ray.

Only bone does because of its mineralization of calcium and phosphorus. They're both metals, technically, so they show up. Metal shows up in x-ray.

Cartilage does not; nor does muscle or tendon.

So, a normal knee will actually show a space at the joint itself. It's not necessarily water or air. It's actually the cartilage. The cartilage does not show up. So, you see narrowing on an x-ray, meaning that space is now disappearing. That means that the cartilage is also disappearing.

When you see near bone-on-bone, that means the cartilage is also disappearing.

When you see near bone-on-bone, that means the cartilage is basically gone.

Id., p. 14.

24. Regarding Claimant's pre-accident left knee symptoms, Dr. Tallerico also testified:

Q. (By Mr. Ford): To you, was there anything significant about his complaint that he had been having knee pain for a period of time and, you know, it involved going up stairs and using a clutch on a vehicle?

A. Well, it was bad enough that he sought treatment with a pretty well renowned orthopedic surgeon in the area for his expertise. And it was for knee pain and knee arthritis. The focus of that visit was around that knee and problems that he was having.

To me, that's not surprising. It's not unexpected. I don't calculate what his age would be at that time, but for somebody with those problems as previously documented to present at that time with knee pain, is not surprising at all.

Id., pp. 31-32.

25. Dr. Tallerico does not believe Claimant tore his meniscus in his industrial accident because it was already macerated. He estimated that Claimant should have been at MMI from his knee strain in April 2012 without PPI or permanent restrictions. Dr. Tallerico summarized his opinion in a single sentence: "the injury did not cause the need for a knee replacement." *Id.*, P. 56.

26. Under cross-examination, Dr. Tallerico agreed that, in November 2010, Claimant had no difficulty standing or walking during his 10-to-12-hour shifts; transferring and pushing patients on the X-ray carts; squatting; and no left knee swelling, popping, or cracking. Dr.

Tallerico did not read the hearing transcript and was unaware that Claimant was only complaining of pain in his left knee in 2010 when walking up stairs and using a clutch. Post-accident, however, Claimant experienced swelling, pain with weight bearing, and limited and painful range of motion in his left knee. Dr. Tallerico could not explain why some people have symptoms after an accident that they did not have before in the face of extensive degenerative changes. He agrees that Claimant's left knee was more symptomatic than before his accident and that the severity of symptoms is one factor leading to the recommendation of a TKA. Dr. Tallerico agreed that Claimant failed to return to baseline symptomatically after his accident. He further agreed that he is the only physician involved in this matter that believes Claimant's need to a left knee TKA was not hastened by his industrial accident.

27. Sid Garber, M.D. Dr. Garber, an orthopedic surgeon, performed a records review at Claimant's request. Dr. Garber understood Claimant's injury resulted from hyperextension of his left knee while it was under excessive stress from transferring a patient at work. He generated a report dated July 27, 2012. Dr. Garber agreed with Dr. Curran that Claimant exhibited symptoms of knee pain and lower left leg osteoarthritis on November 19, 2010. Dr. Garber believes Claimant was not a surgical candidate in November of 2010, and that any attempt to predict when the TKA would have been necessary without Claimant's accident would be "definitely speculation." Claimant's Exhibit 1, p. 2.

28. Dr. Garber summed up his findings in answering the following question posed by Claimant's counsel:

In view of all of the medical information you have before you and the description of the accident and subsequent progression of the symptoms, do you have an opinion as to whether or not the industrial accident was a "substantial factor" causing Mr. Chapman's need for surgery based upon the legal standard set forth above.

Dr. Garber's response:

In view of the medical information I have reviewed, the description and subsequent progression of his symptoms, I do have an opinion as to whether the industrial accident was a substantial factor in causing Mr. Chapman's need for surgery. This is based upon the legal standards set forth above.

Mr. Chapman had a long history of abnormality in his left knee. He had an Osteochondritis Dissecans as a teenager and Dr. Don Baranco in Caldwell did a procedure for that malady when he was fourteen years of age. He had symptoms off and on throughout his life but never totally incapacitated.

Because of a neck fusion he changed professions from Farming [sic] to a Radiology Technician and worked regular hours for five years with little problem to the left knee. When he was injured the original diagnosis was sprain/strain of the left knee, with which I agree.

He did have a positive McMurray sign which is often indicative of a Meniscus [sic] tear and was unable to straighten his leg. He could not return to work, had significant swelling and signs and symptoms suggesting an intra-articular injury. For that reason Dr. Chicoine wisely ordered an MRI. The MRI revealed a macerated significant tear of the Medial Meniscus [sic] and probable tear of the Lateral Meniscus [sic] in association with the Osteoarthritis [sic] of the knee which we already knew about. An Arthroscopic [sic] clean out of the knee at that time would have been ill advised because of the overall condition of the knee and recent literature questioning the advisability of a clean out of an arthritic knee.

Had he not torn the Meniscus [sic] in the knee there is no possible way to tell when or if he would have required a total knee replacement in my opinion. This industrial injury forced Dr. Curran's hand to replace the knee and it would appear that he selected the right procedure for Mr. Chapman in that he has had an excellent result.

Id., pp. 2-3.

29. Howard Shoemaker, M.D. Dr. Curran referred Claimant to Dr. Shoemaker for a

PPI rating on September 4, 2012. Dr. Shoemaker noted:

It appears from the patient's history today, that the patient aggravated a pre-existing condition with a work injury that resulted in surgery, total knee replacement. Although it appears that there was clearly a pre-existing condition/degeneration joint disease, had it not been for the work injury, the need for a total knee replacement in August of 2011 would have been extremely unlikely.

Exhibit A, p. 250.

In *Henderson v. McCain Foods, Inc.*, 142 Idaho 559, 564 130 P 3d 1097, 1102, the Idaho Supreme Court held, “Our prior decisions have made it clear that an employee seeking compensation for medical care must prove that there is a causal relationship between the industrial accident and the need for medical care.” Here, Defendants do not argue that the TKA was not reasonable per the *Sprague*⁶ guidelines; they only argue that Claimant’s TKA was not a result of his industrial accident.

30. This is a classic *Bowman*⁷ case. The Referee is persuaded that Claimant’s pre-existing degenerative OCD was permanently aggravated by his industrial accident to the extent that the need for his TKA was hastened or accelerated. An employer takes an injured worker as found. Here, there is no question that Claimant suffered from pre-existing OCD and degeneration in his left knee that may have resulted in a TKA in any event, nor that Claimant suffered an industrial injury to his left knee. Also, there is no doubt that Claimant exhibited different and more severe symptomatology after his accident than before and never returned to baseline before undergoing TKA.

31. Dr. Curran and Dr. Tallerico⁸ are eminently qualified to render expert opinions. However, Dr. Curran’s opinion this case is more persuasive, as discussed, below.

32. Dr. Tallerico testified that it is not unusual for symptoms to wax and wane in people with pre-existing degenerative conditions. The same can be said for Claimant’s pre-accident symptoms. He occasionally, rather than frequently, sought treatment for his knees. Claimant was not driven by severe left knee pain when he had a casual conversation with Dr.

⁶ See *Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

⁷ See *Bowman v. Twin Falls Construction Company, Inc.*, 99 Idaho 312, 581 P.2d 770 (1978).

⁸ Dr. Garber’s opinion is given little weight in that he opined (contrary to Drs. Curran and Tallerico) that Claimant tore his meniscus in his accident. Dr. Shoemaker’s causation opinion is also given less weight because he was not deposed or otherwise asked to elaborate.

Curran who suggested that Claimant meet with him at his office. While the subject of a left knee TKA may have been discussed, it was not, at that time, an option for Claimant and he continued on with his work until his accident. There is no evidence that Claimant missed any work as a result of his pre-existing OCD, or that he experienced any particular difficulties other than walking up stairs and using a clutch. Claimant credibly testified that he was concerned that he may again develop symptoms associated with his OCD. Even assuming Claimant was a candidate for a TKA in November 2010, his relatively minor symptoms at the time were not such as to make a TKA a realistic option.

33. Dr. Tallerico agreed that Claimant never returned to his pre-accident baseline because he was still having symptoms when he underwent his TKA.⁹ His symptoms disappeared for the most part after his TKA. Both Drs. Tallerico and Curran agreed that two things must be present before consideration of a TKA; symptoms and X-rays. Dr. Tallerico argues that because X-rays taken before and after Claimant's accident were identical, there was no permanence in any injury received in the accident. However, Dr. Tallerico also testified that muscle, tendons, and cartilage do not appear on X-rays. Something was causing Claimant pain after his accident and his TKA apparently solved the problem regardless of what generated the pain. Just because the TKA may have incidentally also resolved Claimant's pre-existing OCD, pseudogout, and/or degenerative disk disease is no reason to deny Claimant's claim.

34. While it is troublesome that Dr. Curran's causation opinions as earlier expressed are at odds with his deposition testimony, nonetheless, his testimony under oath was less equivocal. His deposition testimony is clear that, in his opinion, the mechanics of Claimant's accident, be it a "twisting" or "loading" phenomenon, permanently aggravated Claimant's pre-

⁹ Had Claimant returned to baseline, this proposed decision would likely have recommended a different outcome.

existing OCD and degeneration and hastened the need for his TKA, and the Referee so finds. Dr. Curran had an added advantage of being familiar with Claimant's left knee before, during, and after his TKA.

35. Claimant has proven that his industrial injury hastened the need for his left TKA.

PEYRONIE'S DISEASE

36. Claimant asserts that he sustained an injury to his penis (Peyronie's disease) when a catheter was traumatically removed at the time of his TKA surgery and that he is entitled to benefits under the compensable consequence doctrine. The Idaho Industrial Commission has adopted the "compensable consequence" doctrine discussed in Professor Larson's treatise on workers' compensation. This doctrine provides that when the primary injury (left knee) is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of and in the course of employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional conduct.¹⁰ For a sampling of previous Commission cases recognizing the compensable consequences doctrine, see *Castaneda v. Idaho Home Health, Inc.*, 1999 IIC 0538 (July 1999); *Martinez v. Minidoka Memorial Hospital*, 1999 IIC 0262 (February 1999); and, *Offer v. Clearwater Forest Industries*, 2000 IIC 0956 (October 2000).

37. Claimant relies on the records of William Fredriksson, M.D., a urologist, to support his assertion. Claimant complained to Dr. Fredriksson that after the catheter change, his penis was curved (the Peyronie's disease) and he could not maintain an erection. Dr. Fredriksson

¹⁰ There is no allegation in this case that Claimant's Peyronie's disease resulted from his own intentional conduct. Likewise, the evidence does not raise this issue. Therefore, it will not be addressed further.

authored a To Whom It May Concern letter dated May 14, 2012 in which he opined a temporal relationship exists between the catheter removal and Claimant's subsequent symptomatology:

John Chapman is a pleasant gentleman who underwent traumatic removal of a Foley catheter when undergoing some orthopedic surgery. I have been seeing him for ongoing difficulty with erectile dysfunction and curvature of his penis (Peyronie's). The patient states this was not present prior to the traumatic removal of the catheter and, therefore, it would appear there is a temporal cause and effect to the removal of the catheter and the subsequent penile difficulties/Peyronie's disease.

Exhibit V, p. 20.

38. Claimant's wife, Ruth, testified at hearing that she was in pre-op when Claimant's catheter was changed. The original catheter contained latex and Claimant is allergic to latex, so a non-latex catheter was substituted. Ruth did not see the original catheter being traumatically pulled out or removed. Ruth was not present in the operating room or the recovery room.

39. Claimant also called his sister, Debbie Zeigler, R.N. Although Debbie is an R. N., in the Trinity recovery room, and was present when Claimant was wheeled in by Nurse Kathy Green, she did not participate in his care. She testified that she was present in the recovery room when Claimant was wheeled in by Nurse Kathy Green. According to Debbie, Kathy informed her that Claimant was going to be very sore because his catheter got "pulled out" and she had to replace it with a latex-free one. She did not know what Kathy meant by using the term "pulled out." Debbie did not see either the original catheter's placement or its removal, or the latex-free catheter's placement or removal.

40. Defendants called Kathy Green, R.N., as a witness. She was working in the operating room on the day of Claimant's TKA and wheeled Claimant into and out of the OR. Claimant had already been catheterized when Kathy first came into contact with him, and she was unaware of any issues with the catheter during Claimant's transfer from day surgery to the

OR, or during Claimant's transport to the operating table. During the placement of a tourniquet, Kathy noticed that the catheter in place was latex and she knew Claimant was latex-sensitive, so she removed the catheter and replaced it with one that was latex-free. Kathy testified that there was nothing traumatic about the removal of the latex catheter or the insertion of the replacement. She saw no evidence of injury to Claimant's penis, urethra, or bladder. Had there been it would have been noted, and there is no notation of anything out of the ordinary happening during that process. Kathy does not remember exactly what she told the recovery room nurse, but she could have used the term "pulled the catheter" but that is simply common "nurse slang" for removing a catheter. Kathy testified that had the catheter been traumatically removed, there would be a lot of blood; yet there was none.

41. Kathy testified that she knows Debbie and that she was in the recovery room when she (Kathy) delivered Claimant to the recovery room nurse. She does not remember telling Debbie that Claimant was going to be sore due to pulling out a catheter. Kathy did not tell the recovery room nurse that the latex catheter had been traumatically removed. She further testified that sometime later, Claimant called her at home and inquired why an incident report had not been filled out regarding the catheter issue. Kathy informed Claimant that no catheter had been pulled out or otherwise traumatically removed, so no incident report was required.

42. The Referee finds that Claimant has failed to prove that his Peyronie's disease is a compensable consequence of his TKA. Dr. Fredriksson's opinion hinges on his belief that there was a traumatic removal of a catheter. However, the only evidence, which is unrebutted, regarding the procedure of removing and re-inserting the catheters is that there was no trauma involved. As a result, Dr. Fredriksson's opinion is founded entirely upon a temporal relationship between Claimant's symptoms and his surgery. However, a temporal relationship alone

constitutes insufficient grounds upon which to base a medical opinion. Further, to the extent that Claimant's latex allergy may have contributed to his Peyronie's disease, the medical evidence is inadequate to establish a causal connection. Also, the first mention of any penile injury to Claimant's penis in Dr. Curran's records was not until November, 2, 2011, almost three months post-surgery. Claimant was in the hospital for five days post-surgery and had his catheter removed and replaced many times. From the record, it is impossible to determine the cause of Claimant's Peyronie's disease.

TTDs

Idaho Code § 72-408 provides for income benefits for total and partial disability during an injured worker's period of recovery. "In workmen's [sic] compensation cases, the burden is on the claimant to present expert medical opinion evidence of the extent and duration of the disability in order to recover income benefits for such disability." *Sykes v. C.P. Clare and Company*, 100 Idaho 761, 763, 605 P.2d 939, 941 (1980); *Malueg v. Pierson Enterprises*, 111 Idaho 789, 791, 727 P.2d 1217, 1220 (1986). Once a claimant is medically stable, he or she is no longer in the period of recovery, and total temporary disability benefits cease. *Jarvis v. Rexburg Nursing Center*, 136 Idaho 579, 586, 38 P.3d 617, 624 (2001) (citations omitted).

43. Claimant requests TTD benefits from the date of his TKA (August 8, 2011) until he was released to return to work on October 3, 2011. There being no evidence to the contrary, the Referee finds that Claimant is entitled to TTD benefits during that period.

PPI

"Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or nonprogressive at the time of the evaluation. Idaho Code § 72-422. "Evaluation

(rating) of permanent impairment” is a medical appraisal of the nature and extent of the injury or disease as it affects an injured worker’s personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, elevation, traveling, and nonspecialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. *Urry v. Walker Fox Masonry Contractors*, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

44. The only PPI rating in this matter was provided by Dr. Shoemaker, following the industrial injury. He assigned 8% whole person PPI and apportioned 50% to Claimant’s pre-existing left knee condition. Claimant argues that Dr. Shoemaker’s opinion is inadequate to establish preexisting PPI because it was not rendered before the industrial injury. The Referee disagrees with Claimant’s premise. Dr. Shoemaker’s opinion properly considers the evidence in the record of Claimant’s preexisting left knee impairment. Thus, it constitutes a sufficient factual basis upon which to apportion Claimant’s post-injury PPI. Therefore, the Referee finds that Claimant has incurred whole person PPI of 4%.

RETENTION OF JURISDICTION

45. Claimant requests that the Commission retain jurisdiction of his case because he, “. . . anticipates the possible need to seek future indemnity benefits related to that procedure (the TKA).” Claimant’s Opening Brief, p. 26. Claimant cites *Geisendaffer v. Dan Wiebold Ford, Inc.*, 2011 IIC 0010 as Commission precedent for retaining jurisdiction. That case also involved a TKA. However, in that case the claimant had not yet undergone that procedure at the time of the hearing. Here, Claimant has undergone a successful TKA and has been rated for PPI and there is no evidence that he is likely to incur additional permanent impairment or disability in the

future. The Referee finds that Claimant has failed to prove a need for the Commission to retain jurisdiction.

CONCLUSIONS OF LAW

1. Claimant has proven that the need for his TKA was hastened by the permanent aggravation of his pre-existing degenerative condition and Defendants are liable for all medical benefits associated therewith.

2. Claimant has failed to prove that his Peyronie's disease is a compensable consequence of this TKA.

3. Claimant has proven his entitlement to TTD benefits from August 8, 2011 to October 3, 2011.

4. Claimant has proven his entitlement to 4% whole person PPI benefits.

5. Claimant has not shown sufficient grounds to retain jurisdiction.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusions of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __10th__ day of June, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __19th__ day of __June__, 2013, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

RICHARD S OWEN
PO BOX 278
NAMPA ID 83653

JAMES A FORD
PO BOX 1539
BOISE ID 83701

ge

Gina Espinoza

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOHN CHAPMAN,

Claimant,

v.

TRINITY HEALTH CORPORATION,

Self-Insured Employer,

Defendant.

IC 2011-012506

ORDER

Filed June 19, 2013

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers 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 recommendation 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 proven that the need for his TKA was hastened by the permanent aggravation of his pre-existing degenerative condition and Defendants are liable for all medical benefits associated therewith.
2. Claimant has failed to prove that his Peyronie's disease is a compensable consequence of this TKA.
3. Claimant has proven his entitlement to TTD benefits from August 8, 2011 to October 3, 2011.

4. Claimant has proven his entitlement to 4% whole person PPI benefits.
5. Claimant has not shown sufficient grounds to retain jurisdiction.
6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __19th__ day of __June__, 2013.

INDUSTRIAL COMMISSION

____/s/_____
Thomas P. Baskin, 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 __19th__ day of __June__ 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

RICHARD S OWEN
PO BOX 278
NAMPA ID 83653

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ge

____/s/_____