

ISSUES

The issues to be decided are:

1. Whether or not Claimant's injury to her left knee was caused by the industrial accident, and the consequences thereof.
2. Whether Claimant is entitled to total temporary disability benefits during a period of recovery for left knee surgery.
3. Whether Claimant is entitled to repayment of medical expenses pursuant to the Neel Doctrine.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

All parties acknowledge Claimant suffered an industrial accident when she fell at work on December 4, 2014, and injured her left ankle for which she ultimately underwent two ankle surgeries at Defendants' expense. While recovering from her left ankle surgeries, Claimant used a rollabout scooter¹ for mobility, kneeling on the scooter on her left knee and propelling herself with her right foot. She asserts her use of the scooter aggravated her pre-existing left knee arthritis resulting in the need for left total knee replacement. She seeks temporary disability benefits during her recovery from knee replacement surgery and medical benefits at full invoiced amounts for her total left knee replacement. Defendants dispute the causation and compensability of her total left knee replacement surgery.

¹ The parties and medical experts have variously referred to the rollabout scooter as a scooter, knee scooter, roller scooter, rollabout walker, roll-a-bout walker, Roll-A-Bout walker, or knee walker. All terms refer to the same type of assistive apparatus which Dr. Spelich and Dr. Schwartzman described as a handle bar-equipped steerable four-wheeled padded platform approximately six inches wide, 24 inches long, and 24 inches high upon which a patient may rest his or her knee and lower leg to provide mobility while avoiding weightbearing on the foot or ankle. Schwartzman Depo., 47, Spelich Depo., 8-9.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. The pre-hearing deposition testimony of Josephine Lopez Guzman taken July 25, 2017 and admitted as Joint Exhibit 45;
3. Joint Exhibits 1-50, admitted at the hearing;
4. The testimony of Claimant and Lorraine Thompson taken at hearing;
5. The post-hearing deposition testimony of Mark A. Spelich, M.D., taken by Claimant on September 18, 2017; and
6. The post-hearing deposition testimony of Roman Schwartsman, M.D., taken by Defendants on September 22, 2017.

All pending objections are overruled and motions to strike are denied.

FINDINGS OF FACT

1. Claimant was born in 1949. She is right-handed. She was 68 years old and lived in Pocatello at the time of the hearing. Dickinson is a commercial food processor.
2. **Background.** Claimant was raised in Nyssa, Oregon. She completed the 11th grade and later obtained a GED. In 1988-89 she received formal training in food service management and thereafter worked as a nursing home food service manager for approximately eight years.
3. In 2002, Claimant sustained an industrial injury in Oregon and ultimately underwent lumbar surgery. After recovering, she returned to work and noted some ongoing back symptoms but was able to work consistently. In approximately 2012 Claimant underwent left foot reconstruction surgery with medial column fusion to correct a flatfoot deformity.

4. In April 2014, she lived in Ontario and began working at Dickinson on the processing line cutting bad spots out of onions and peppers.

5. **Industrial accident and treatment.** On December 4, 2014, Claimant was working at Dickinson when she slipped on a pepper and fell down a flight of stairs. She noted immediate neck, back, and left ankle pain. She was taken by ambulance to the hospital where she was examined, given injections for pain control, and released. Claimant's neck and back symptoms resolved over time, but her left ankle pain persisted. Dickinson acknowledged the occurrence of the accident and accepted her left ankle claim.

6. On January 25, 2015, Claimant presented to Lawrence Sladick, M.D., who performed left ankle injections which provided no lasting benefit. On February 27, 2015, Claimant presented to George Nicola, M.D., who ordered a left ankle MRI. On July 28, 2015, Claimant presented to Travis Kemp, M.D., who ordered a left ankle CT scan and recommended left ankle surgery. On September 23, 2015, Dr. Kemp performed left ankle surgery including left medial midfoot removal of hardware, repair of nonunion of left talonavicular joint arthrodesis, and left subtalar joint arthrodesis. Exhibit 20, p. 398.

7. On October 29, 2015, Dr. Kemp removed the cast and gave Claimant a walking boot, instructing her to avoid left ankle weight-bearing. Claimant testified that she began using a wheelchair and then a rollabout scooter to get around. She experienced no left knee pain during this time. On December 1, 2015, Dr. Kemp instructed Claimant to begin putting weight on her left foot. Claimant likely used the rollabout scooter for approximately five weeks after her 2015 left ankle surgery.

8. On January 12, 2016, a CT scan of Claimant's left ankle showed non-union of the subtalar joint and the talonavicular joint with displacement of the bone graft wedge. On

February 24, 2016, Dr. Kemp performed a revision left subtalar joint arthrodesis and revision left talonavicular joint arthrodesis. Exhibit 20, p. 419.

9. Claimant testified she began using the rollabout scooter again after her 2016 left ankle surgery by about March 10, 2016. She was clearly using the scooter before the end of March as Dr Kemp's March 31, 2016 note recorded: "She does have a tiny 1.5 cm ulcer on the tibial spine from her roller scooter where her cast was making contact with it." Exhibit 20, p. 426. Dr. Kemp's notes from March 10, 15, and 31, 2016, contain no mention of left knee pain.

10. On April 18, 2016, Claimant presented to the emergency room where Alan Bean, M.D., recorded:

This is a 66-year-old female who presents today with complaints of syncope. The patient was being seen at the clinic when she had a syncopal episode. She fell yesterday and hit the back of her head and she has been having severe pain with that since. Apparently when she fell her son described that she was staring off into space and was not responsive. She had a history of seizures about 10 years prior and then had a stroke 2-3 years ago. Prior to me seeing her the nurse reported that she had a seizure in the room that was witnessed by the nurse. The patient points to the back of her head where she has significant swelling and tenderness.

Exhibit 21, p. 459. Cervical and head CT scans were negative for acute changes. Claimant was given one time doses of Toradol and Keppra and released.

11. On April 28, 2016, Claimant was seen by Dr. Kemp's assistant, Richard Trump, PA-C, who provided a CAM walking boot and instructed her to begin partial weightbearing. Exhibit 20, p. 427.

12. On April 29, 2016, Claimant presented to Nicole Hoyt, PA-C who recorded:
Fall 4-17-2016 injuring her left knee, on the inside, patient had surgery about a month ago for her left ankle.

HPI

Patient is a 66-year-old female who presents today for a fall that she reports was 2-3 weeks ago leaving her with pain over the medial left knee. Patient had surgery and is in a walking boot for her ankle. She states her knee continues to be swollen despite rest and ice. She does admit to instability as well as popping and clicking.

Exhibit 21, p. 476. Moderate swelling and tenderness were noted in the left medial knee. X-rays showed medial and patellofemoral compartment osteoarthritis but no acute fracture or dislocation.

13. On April 30, 2016, Claimant presented to the emergency room complaining of traumatic left knee pain: “The pt fell on the 18th. The pt was seen yesterday in the urgent care and told to wait 5 days to be reevaluated, but if it was worse after that to be seen in the ED after that. She couldn’t wait the 5 days as her pain has increased.” Exhibit 21, p. 489. The history stated:

This is a 66-year-old female who presents today with complaints of knee pain. The patient apparently had any [sic] injury about 2 weeks prior but then over the last 5-6 days she has noted increasing pain on the same knee. The pain is [sic] been on the medial side of the knee just above [the] boot that she is wearing secondary to a surgical repair that she had done there. She had been on a scooter and had fallen over and landed on the floor. She was seen yesterday at the walk-in clinic and they told her that I [sic] did not get better to follow up in a few days. She said the pain was worse and that her medications that she [has] at home is [sic] not working so she is here for further evaluation and treatment.

Exhibit 21, pp. 490-491. Claimant was given injections for her pain and released.

14. On May 1, 2016, Claimant presented to the emergency department complaining of left knee pain:

This is a 66-year-old female who presents to [sic] with complaints of knee pain. She was seen yesterday for the same thing. She is complaining of knee pain on the medial side of the knee and into the lateral portion of the knee. She has been wearing a brace on the left foot from surgery that she had completed. She is no longer using a scooter much and she is walking with a walker.

Exhibit 21, p. 506. At hearing, Claimant testified that her left knee pain increased only temporarily after the fall and then abated, returning to its pre-fall severity. However, at her July 25, 2017 deposition, Claimant testified that she no recollection of the April 17, 2016 fall or the care she received on April 29, 30 and May 1st, 2016. Guzman Depo. 136/21-138/7.

15. On May 25, 2016, physical therapist Craig Hamann, D.P.T., recorded: “She has the most pain in the proximal anterior to lateral shin around the pes anserine insertion. This started while on the knee scooter, but has gotten better since starting therapy.” Exhibit 22, p. 538.

16. Claimant reported no left knee pain in her followup medical appointments with Dr. Kemp or his assistant on May 26, or June 9, 2016.

17. On July 21, 2016, Richard Trump, PA-C, examined Claimant and recorded:

She does have some left knee pain after having to use a roll-a-bout walker for a protracted period of time. This is getting better now that she is off the roll-a-bout.

.... Her left knee has mild effusion due to the amount of time she was using the roll-a-bout. This should settle down with an anti-inflammatory and getting off of the roll-a-bout.

Josephine’s left knee has been very painful for her related to prolonged use of her roll-a-bout walker during her recovery. I have evaluated her today. She has no significant effusion. Range of motion is well preserved, but she does have pain along the medial and lateral joint lines. I would like to refer her to Dr. Mark Spelich for further workup of her knee pain.

Exhibit 20, p. 435.

18. On August 4, 2016, Claimant presented to orthopedic surgeon Mark Spelich, M.D., who recorded:

Chief complaint: Left knee pain. Patient reports the pain as constant, 4/10, 7/10 when she tries to use the rollabout. Patient with ongoing progressive left knee pain subsequent to using the rollabout walker for a protracted period of time off for nonweightbearing treatment of her left foot from surgeries. This is an acute, complicated problem. 66-year-old female is now with acute exacerbation

of her chronic left knee osteoarthritis secondary to use of a rollabout 2 facilitate nonweightbearing as prescribed postoperatively for her foot surgery.

Exhibit 23, p. 543. X-rays documented significant degenerative arthritis in both knees; however, only Claimant's left knee was symptomatic. Dr. Spelich performed a left knee steroid injection using Kenalog in an attempt to reduce the left knee inflammation and pain.

19. On September 8, 2016, Dr. Spelich examined Claimant again. She reported the August 4 left knee injection "did help significantly for three weeks, but then began to wear off." Spelich Depo., 14/3-4. Dr. Spelich performed another left knee steroid injection using Depo-Medrol in another attempt to provide lasting symptom relief.

20. On October 6, 2016, Claimant presented to Dr. Spelich again. She reported the September 8 injection had provided only temporary relief for a matter of weeks after which her left knee pain returned. Considering Claimant's significant left knee osteoarthritis and concluding that nonoperative management of Claimant's left knee pain was ineffective, Dr. Spelich recommended total left knee replacement.

21. On November 22, 2016, Claimant was examined by orthopedic surgeon Roman Schwartsman, M.D., at Defendants' request. Dr. Schwartsman concluded Claimant's alleged left knee pain was not due to her use of a rollabout scooter while recovering from her left ankle surgeries and she needed no left knee replacement. Defendants denied responsibility for Claimant's left knee condition and declined to authorize left knee replacement surgery.

22. On December 30, 2016, Dr. Spelich performed total left knee arthroplasty. The surgery was paid for by Medicare. Dr. Spelich examined Claimant several times in post-surgery followup. On June 15, 2017, he examined Claimant and noted she continued to improve. He characterized her surgical outcome as "appropriately good. I think she responded to the total knee as I would hope and expect." Spelich Depo., 24/13-14.

23. **Credibility.** The Referee, having observed Ms. Thompson at hearing, and compared her testimony with other evidence in the record, found Ms. Thompson to be a credible witness. The Commission has no reason to disturb this finding of observational and substantive credibility. However, as developed below, Ms. Thompson's testimony is so non-specific as to be unhelpful in pinpointing when Claimant began to develop left knee pain.

24. Claimant's friend, Lorraine Thompson, has known Claimant for 8 or 9 years. During the relevant time period, their interactions were mainly limited to attending doctor appointments together, although Thompson did stop by Claimant's house "every once in a while" to check on Claimant and visit with her. Tr.14/19-15/1. Following the second ankle surgery, Thompson was aware of Claimant's use of the rollabout. She was also aware that following Claimant's second ankle surgery, Claimant began to develop left knee pain. However, she was not specific as to when she recalled these complaints beginning. At one point, she mentioned that she became aware of these complaints in the spring of 2016, and at another that she noted Claimant's complaints beginning at some point prior to July 4, 2016. Tr.16/12-17/7. At yet another point, she testified that she recalled becoming aware of Claimant's knee complaints within a few weeks before Claimant saw Dr. Spelich in August of 2016. Tr.18/7-9. Finally, Ms. Thompson testified that she recalls that Claimant complained of left knee complaints during the time that she (Claimant) was using the rollabout. Tr.24/2-21. At the end of the day, she could not be more specific about the onset of Claimant's left knee complaints other than to say they started not too long after the second surgery. Tr.21/10-16. However, this would not be inconsistent with the onset of knee complaints following the April 17, 2016 fall. Based on the variability of her testimony, Ms. Thompson's recollections are not particularly

helpful in identifying, with any specificity, when, or under what circumstances, Claimant's left knee complaints first began.

25. The record demonstrates Claimant to be a poor and contradictory historian. About many of the particulars of this case she has no recollection, and her testimony about many of the things she claims to remember is inconstant. For example, Claimant testified that she gave up cigarettes in 2013 and had been tobacco-free for at least three years prior to her December 2016 left knee arthroplasty. Guzman Depo., 29/2-23. However, she later testified that she did use tobacco immediately prior to the first ankle surgery and between the second ankle surgery and the total knee arthroplasty. Guzman Depo., 31/2-4; 120/17-20. Despite medical documentation of the same, Claimant categorically denied having right knee surgery in 2012. Claimant testified that she followed Dr. Kemp's post-surgery instructions to bear no weight on her fused ankle "to the T." Guzman Depo., 128/10-18. However, when confronted with Dr. Kemp's chart notes of March 31, 2016 and April 28, 2016, Claimant conceded that she did bear weight on her ankle before she was supposed to, and contrary to Dr. Kemp's instructions. Guzman Depo., 128/19-130/14; Tr. 91/23-93/16; 94/95-11. Claimant said many different things about when she first began to develop left knee pain. By March 31, 2016, Claimant's knee was hurting a little bit, but not enough to abandon use of the rollabout. Guzman Depo., 130/15-23. Claimant's left knee pain began 2 – 3 months following the February 24, 2016 ankle surgery. Guzman Depo., 130/24-131/5. Claimant was feeling left knee pain by the time of her April 28, 2016 visit with Dr. Kemp. Guzman Depo., 134/22-24. Claimant's knee pain did not start until after she had stopped using the rollabout. Guzman Depo., 135/4-7. Claimant was not having left knee pain on March 31, 2016 because she would have told Dr. Kemp about it had she been experiencing left knee pain on the occasion of that visit. Tr., 93/17-25. Similarly, Claimant did not have left knee pain

on April 28, 2016 because had she been suffering from pain on the occasion of that visit with Dr. Kemp she would have told him about it. Tr., 94/17-95/2. Claimant's left knee pain began during her use of the rollabout. Tr., 91/15-22. Claimant cannot identify any event or date that would help her pinpoint the time of onset of her left knee pain. Guzman Depo., 135/8-11. From this testimony we conclude, as did the Referee, that Claimant is a poor historian, and that her testimony cannot be relied upon to pinpoint the onset of her left knee symptomatology. To the extent Claimant's testimony is inconsistent with the medical records, the medical records will be relied upon.

DISCUSSION AND FURTHER FINDINGS

26. The provisions of the Idaho 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).

27. **Direct and natural consequences.** The essence of the first issue is whether Defendants are liable for treatment of Claimant's left knee, including total left knee replacement performed by Dr. Spelich on December 30, 2016. Idaho Code § 72-432 requires an employer to provide an injured employee reasonable medical treatment necessitated by an injury or occupational disease. An employer is not responsible for medical treatment not related to an industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997). Thus, this issue requires consideration of both the cause and reasonableness of Claimant's total left knee replacement surgery.

28. Causation. The direct and natural consequences rule addresses the proximate legal cause of a subsequent injury and evaluates the compensability of a subsequent injury or aggravation related to a prior industrial injury. “The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.” 1 A. Larson & L. Larson, *Workers' Compensation* (2011) § 10.01, pp. 10-2 through 10-3. The rationale is that the original industrial injury is the cause of all that follows.

29. In Idaho the direct and natural consequences rule has been applied on occasion. In Mulnix v. Medical Staffing Network, Inc., 2010 IIC 0368, 2010 WL 4337035, the claimant suffered an industrial injury that required left shoulder surgery. She subsequently suffered a left shoulder labral tear during therapy for her original industrial injury. The Commission found that the additional medical treatment necessitated by the labral tear sustained during therapy was compensable, expressly noting that:

When the primary injury 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 employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct. Larson's, *The Law of Worker's Compensation*, § 13.

Mulnix, 2010 IIC 0368, 2010 WL 4337035, at 8. See also Gerdon v. Con Paulos, Inc., 2012 IIC 0085, 2012 WL 5398867 (L3-4 disc bulge permanently aggravated by participating in rehabilitation therapy for original industrial accident deemed related and thus compensable).

30. To prove entitlement to medical benefits the injured worker must prove causation by medical evidence to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Similarly, under the direct and natural consequences rule, the injured worker must also prove causation by medical

evidence to a reasonable degree of medical probability. See Cavallo v. S. L. Start & Associates, Inc., 2012 IIC 0104 (aggravation of industrial cervical injury by home therapy for original industrial injury deemed related by expert medical testimony and thus compensable).

31. In the present case, Dr. Kemp, Dr. Spelich, and Dr. Schwartzman have opined regarding the causation of Claimant's left knee total arthroplasty.

32. *Dr. Kemp.* Dr. Kemp was Claimant's treating surgeon who performed both of her left ankle surgeries for her original industrial accident. He supported Claimant's use of the rollabout scooter during her recovery from those surgeries. Dr. Kemp recorded in his notes: "The knee pain was caused by the patient using her roll-a-bout scooter and kneeling on the knee during her recovery from left hindfoot surgery." Exhibit 20, p. 439. However, Dr. Kemp's records do not reflect that Claimant ever presented to Kemp with complaints of left knee pain until July 21, 2016, almost two months after Claimant stopped using the rollabout. Moreover, Dr. Kemp's records do not reflect that he or his staff were ever made aware of the April 17, 2016 syncopal event and Claimant's subsequent follow-up care for acute onset left knee pain in late April and early May of 2016.

33. *Dr. Schwartzman.* Dr. Schwartzman is a board certified orthopedic surgeon who examined Claimant on November 22, 2016 at Defendants' request. Dr. Schwartzman found Claimant to be often unreliable, frequently confused, and a very poor historian. Dr. Schwartzman readily acknowledged that Claimant's long term use of strong prescription narcotic pain medications impaired her memory.

34. Dr. Schwartzman found Claimant had lumbar tenderness, left leg weakness, sciatic nerve pain, and iliotibial band tenderness. He concluded Claimant walked with an exaggerated limp. He opined she did not consistently respond to tests for an arthritic knee or a

meniscal tear, but rather described pain originating from outside the knee joint. Schwartsman Depo., 20. He noted her prior L5-S1 fusion with persistent left-side sciatica and opined “after examining her, that the majority of her pain was really coming from her back rather than her knee.” Schwartsman Depo., 21/15-17. Dr. Schwartsman opined that Claimant “has arthritis in the right knee, and she has arthritis in the left knee, and they both appear, essentially, the same.” Schwartsman Depo., 23/12-15. He thus reasoned: “any arthritic complaints that she would have on the left, she would be expected to have on the right.” Schwartsman Depo., 24/12-14. Dr. Schwartsman concluded that Claimant’s need for a “knee replacement ... was not directly causally related to the use of a rollabout walker, nor was the need for a knee replacement aggravated or exacerbated in any meaningful and significant way by the use of a rollabout walker.” Schwartsman Depo., 27/14-18.

35. *Dr. Spelich.* Dr. Spelich performed Claimant’s total left knee arthroplasty on December 30, 2016. Dr. Spelich believes that Claimant’s use of the rollabout permanently aggravated Claimant’s left knee arthritis and accelerated the need for a total knee replacement. He believes that this aggravation was accomplished by Claimant’s “extended” and “protracted” use of the rollabout. He initially believed that Claimant was still using the rollabout on the occasion of his first evaluation of Claimant on August 4, 2016. Spelich Depo., 35/2-5. Dr. Spelich did not have an understanding as to when Claimant began to use the rollabout. Spelich Depo., 34/5-8. Dr. Spelich was asked whether his opinion on causation would change if the facts demonstrate that Claimant actually stopped using the rollabout on or about April 28, 2016. Dr. Spelich testified that this fact would not be important to him; it would merely demonstrate that Claimant stopped using the rollabout because it became too painful for her. However, there is no indication in Dr. Kemp’s April 28, 2016 chart note that Claimant complained of left knee pain

with use of the rollabout or that Claimant's status was changed from non-weight bearing to partial weight bearing with use of a CAM boot because of concerns for her left knee.

36. With respect to the impact of Claimant's exposure to the rollabout, Dr. Spelich testified that if Claimant had more severe left knee arthritis, then a shorter period of rollabout use might suffice to cause Claimant to become symptomatic in the left knee. On the other hand, less severe left knee arthritis might require longer use of the rollabout in order to induce symptoms. In Claimant's case, it is difficult to know how much rollabout use would actually be necessary in order to induce symptoms in the left knee. Spelich Depo., 37/3-39/17. Dr. Spelich's opinion that Claimant's left knee condition is, in some respect, mediated by use of the rollabout depends on his belief that Claimant's left knee pain significantly increased while using the device:

Q: [By Mr. Ford] Did you make an assumption, as you evaluated her case, as to when she developed the left-knee pain? You said you didn't know, but did you make an assumption based - -

A: The decision I made was based on her use of the rollabout, based on the fact that her pain significantly increased when she uses it, and she didn't have any complaints of knee pain prior to that.

Q: Did you make an assumption about when the pain developed, though?

A: As I didn't state a date that it started, I didn't make an assumption.

Q: Was when it started important, as you evaluate this issue of, you know, causation, that the rollabout played a role in bringing about the need for the total knee replacement?

A: I think as long - - I think as long as the pain started after she started using the rollabout, then I would say, as I have, that the rollabout was a major contributing factor to her knee pain.

Q: What else could have been contributing factors?

A: I don't know.

Q: And I can't remember if I asked this: Do you know how long - - you testified that she was using the Roll-A-Bout when you first saw her correct?

A: Correct.

Q: Okay. If she wasn't using the Roll-A-Bout in the time frame that you saw her, would that be important to your evaluation?

A: I think the important thing was did she use her Roll-A-Bout, and did she have increased pain when she used the Roll-A-Bout, or from the use of the Roll-A-Bout, would be the important thing.

Spelich Depo., 39/18-41/1. From this, it would follow that the rollabout use aggravated Claimant's pre-existing left knee symptomatology. Dr. Spelich was unaware of any other contributing factors besides Claimant's pre-existing arthritis and her use of the rollabout. Dr. Spelich described the mechanism by which use of the rollabout aggravated Claimant's underlying knee condition as follows:

Q: [By Mr. Owen]: Dr. Spelich, are you able to illustrate for us in any way or demonstrate how you think the use of this rollabout caused the aggravation of her arthritis in her left knee?

A: Yeah. I mean - - in general, the loading of the knee is axial, so you're normally bearing weight directly down through the knee. That's what her knee, and in this case, arthritic knee was used to. And it is not uncommon that when somebody's joint sees some abnormal stress or motion, that it can exacerbate the symptoms of arthritis. And not uncommonly, to the point where it can't be addressed nonoperatively, even if the person had never had symptoms before and, potentially, requiring this replacement. I think I can demonstrate using this stool. Pretty similar idea that you would rest your leg in this fashion on the rollabout. And so, to some degree, consistent with kneeling on the ground, which, you know, we also see difficult for people with arthritis, and most people have stopped doing that because it's problematic. And maybe, I think, fairly similar - - yes, it's padded, but you're still bearing the weight down through that. And as the tibia is completely supported, and your femur is in front of the tibia, and you've got more weight - - obviously, all of your weight in your body is coming down through the femur, that's going to cause the femur to - - if not just stress, potentially even sublux anteriorly on the tibia. And so, again, that's an abnormal motion created in the knee. And it may even be, you know, micromotion not significantly measurable, but that repetitive and every time you take a step and load back onto that rollabout, that there's going to be that, again, abnormal stress, something that your body doesn't normally see. And I think, with a high degree of probability, has the potential to cause pain and what we've talked about this one requiring.

Spelich Depo., 26/12-28/1.

37. Dr. Spelich's opinion is challenged by a lack of evidence supporting his underlying assumption that Claimant developed knee pain while using the rollabout. As developed *infra*, Dr. Kemp's notes do not reflect that Claimant ever presented with complaints of left knee pain prior to April 28, 2016, the day Claimant gave up use of the rollabout for a CAM boot and walker. Moreover, the record contains no references to left knee pain in other medical records until after Claimant's April 17, 2016 syncopal event. Dr. Spelich testified that Claimant did tell him of the April 17, 2016 event, but did not share with Dr. Spelich information relating to the follow-up visits of April 29, April 30 and May 1, 2016. Spelich Depo., 50/14-51/16. These notes reflect Claimant's complaints of severe left knee pain following the April 17, 2016 fall, and her relation of these complaints to the April 17, 2016 fall. Dr. Spelich acknowledged that in developing an opinion on the cause of Claimant's left knee complaints, knowledge of this treatment would be important, especially if the April 17, 2016 event contributed to Claimant's knee pain. Spelich Depo., 51/17-52/7. We appreciate that Claimant has testified to experiencing left knee pain during her use of the rollabout, but as noted, we do not find her testimony in this regard to be particularly reliable.

38. Finally, when pressed with the facts that none of Dr. Kemp's records reflect that Claimant presented with complaints of left knee pain until July 21, 2016, well after she had stopped use of the rollabout, Dr. Spelich proffered another explanation for how use of the rollabout caused or contributed to Claimant's left knee pain.

39. If Claimant did not become symptomatic with use of the rollabout, and only developed symptoms after she gave up use of the device, Claimant's left knee complaints can still be causally related to the use of the rollabout by the following route:

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Q. [By Mr. Ford]: Okay. If the record establishes that Ms. Guzman stopped using the rollabout at the time she transitioned to the CAM boot and the front-wheel walker, and there's no complaint of left-knee pain in Dr. Kemp and Mr. Trump's records prior to July of 2016, is your opinion any different as to the relationship between the need for surgery and use of the rollabout walker?

Q: [By Mr. Owen]: I object to the form of the question on the grounds it's misleading; it omits significant evidence.

A: I guess, as we've, you know, used the rollabout as the culprit in the cause for her need for this, I think the question really is: Why did she have the rollabout. And that was because of foot and ankle surgery. Which as I think about it more, you previously asked a question, would there be other reasons why she would have knee pain. Which I would, after further consideration, say, yes. And that is, she had disuse of the lower extremity in the time that she was non-weightbearing subsequent to injury and surgeries. And when somebody begins weightbearing and reuse of that limb, as she was when she made partial weightbearing with the walker, CAM boot, et cetera, we also at that point, see exacerbation of pain, whether it's in a native joint or arthritic joint. And, obviously - - or an arthritic joint is more prone to have that development of, effectively, overuse pain. Overuse now being normal use, but compared to the lack of use for a period of time, the joint sees it as overuse.

Q: [By Mr. Ford]: And this idea of overuse, that's not an opinion that you've stated at any time before today; correct?

A: Correct.

Spelich Depo., 44/2-45/12.

40. Therefore, following, and in the context of, a period of enforced non-weight bearing, Claimant's return to partial weight bearing would affect the knee joint as a type of "overuse," sufficient to cause an aggravation of Claimant's left knee arthritis.

41. We find this theory to be less credible than Dr. Spelich's favored theory. This second theory is undermined by the fact that Claimant presented with severe left knee complaints following the April 17, 2016 syncopal event, and related these complaints to that incident. How is this to be accounted for in Dr. Spelich's proposal that it was simply the return to weightbearing or partial weightbearing that induced Claimant's symptoms? A more serious objection to this

theory is that it is based on the fallacy that Claimant's left knee was not subject to weightbearing during her use of the rollabout. Certainly, this could be said of her left ankle, since this was whole point of using the rollabout. However, Claimant's left knee obviously was bearing her weight, albeit in a different fashion, while she was using the rollabout. Dr Spelich's second theory of causation ignores the mechanism of injury he described in his first theory; unusual/different loading of the left knee caused by rollabout use.

42. In summary, we reject both of Dr. Spelich's theories on causation. The first depends on Claimant experiencing knee pain while using the rollabout, and necessarily assumes that there was no other cause, such as the April 17, 2016 syncopal event, of the onset of discomfort. We find these assumptions unsupported by the evidence we find persuasive. The second theory is even less credible, and that it was offered at all undermines Dr. Spelich's general credibility.

43. We do not disagree with Dr. Spelich that Claimant required total left knee arthroplasty after failing conservative measures, to include two courses of knee injections. While the knee injections afforded Claimant some temporary relief, they did not manage her symptomatology on a long-term basis. Nevertheless, the injections were diagnostic for Claimant's knee being the likely cause of her problems, as opposed to her low back. Further, the fact that Claimant has reportedly enjoyed a good outcome following the left TKA reasonably supports the conclusion that the problem was in her knee and not her low back, as has been proposed by Dr. Schwartzman.

44. While we believe that Claimant did require the left total knee replacement performed by Dr. Spelich, we conclude, for the reasons stated above, that Claimant has failed to satisfy her burden of establishing a causal relationship between her use of the rollabout and her

left knee condition. If anything, Claimant's left knee complaints seem to be more closely associated with the April 17, 2016 fall.² Therefore, Claimant's left knee condition and need for left knee surgery is not a natural and probable consequence of the subject accident.

45. Based on our conclusion that Claimant has failed to meet her burden of proving a causal relationship between her use of the rollabout walker and her left knee complaints, all other issues are moot.

CONCLUSIONS OF LAW AND ORDER

1. Claimant has failed to prove that her left knee injury is, in some respect, causally related to her use of a rollabout walker following her second ankle surgery.

2. All other issues are moot.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __27th__ day of __February__, 2018.

INDUSTRIAL COMMISSION

_____/s/_____
Thomas E. Limbaugh, Chairman

_____/s/_____
Thomas P. Baskin, Commissioner

_____/s/_____
Aaron White, Commissioner

ATTEST:

_____/s/_____
Assistant Commission Secretary

² It is not argued that this fall is, itself, a natural and probable consequence of the December 14, 2014 accident.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February , 2018, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** 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

_____/s/_____
