GREGORY LUCAS, Claimant, v. NORTHCON, INC., Employer, and IDAHO STATE INSURANCE FUND, Surety, Defendants - IC 2009-000033 filed May 11 2018

ISSUES

The issues to be decided are as follows:
1. Whether Claimant's condition is due in whole or in part to a preexisting injury or condition;
2. Whether and to what extent Claimant is entitled to the following benefits:
a. Medical care;
b. Permanent partial impairment;
c. Permanent partial disability;
3. Whether apportionment for a preexisting condition pursuant to Idaho Code § 72-406 is appropriate; and
4. Whether Claimant is entitled to attorney fees pursuant to Idaho Code § 72-804

CONTENTIONS OF THE PARTIES

Claimant contends that his industrial accident of December 30, 2008 loosened the prosthesis from his 2003 total right hip replacement and hastened the need for its revision. He argues that the costs of that surgery and related care are compensable. He contends that future palliative care, including acupuncture recommended by his treating physician, Eric T. Sandefur, D.O., should be compensable. Claimant further alleges that he is entitled to an impairment of the lower extremity as determined by Robert Friedman, M.D. Finally, he contends, based upon the work restrictions assigned by Dr. Sandefur, that he has a permanent partial disability in the amount of 60%, inclusive of impairment.

Although Defendants paid for Claimant's right hip replacement revision surgery and related care, they deny that the need for this medical care was industrially related. They emphasize that prior to the 2008 industrial accident, Claimant had significant prior injuries and medical conditions, including severe degenerative arthritis in his right hip that resulted in a total hip replacement in 2003. They contend that the need for the revision of the total hip replacement was due to the prosthesis normally wearing out and not due to trauma from the industrial accident. Because they deny that the need for hip revision surgery was industrially related, Defendants deny liability for further medical care related to the same. Defendants argue that Dr. Friedman's impairment rating is not credible because he failed to appropriately apportion Claimant's preexisting hip condition. To the extent that Claimant has any disability, Defendants contend that it is due entirely to preexisting conditions and not the industrial accident, thus they are not liable for Claimant's disability benefits

CONCLUSIONS OF LAW

1. Claimant's December 30, 2008 industrial accident accelerated/aggravated his total right hip arthroplasty originally performed in 2003. This condition is compensable.
2. Defendants are liable for medical expenses related to Claimant's January 12, 2016 right hip revision surgery and associated care, including reasonable palliative care as determined necessary by Claimant's physician, including Dr. Sandefur's recommendation for acupuncture.

3. Claimant is entitled a net 6% permanent partial impairment of the lower left extremity as a result of the industrial accident.
4. Claimant has no net permanent partial disability referable to his industrial injury. Defendants have established that all of Claimant's disability is referable to his preexisting impairments under Idaho Code § 72-406(1).
5. Due to their unreasonable delay of Claimant's hip revision surgery, Defendants are liable for attorney fees pursuant to Idaho Code § 72-804.

SYNOPSYS OF FINDINGS

Claimant had extensive prior injuries including: total hip replacement in 2003, back surgery, and an industrially-related ankle and knee surgery. For this injury, Claimant was taping sheetrock while standing on a bucket when he fell and injured his right hip. He initially lied to the employer about the cause of the injury stating he slipped on ice. Claimant continued to complain of pain in his right hip. After several providers indicated that he may be some mild loosening of the hardware in the hip, surety sent Claimant to an IME with Dr. Waters. Dr. Waters diagnosed a traumatic bursitis and Claimant's complaints were unrelated to his hardware. Surety denied further treatment of the hip based on this IME. After several years, Claimant returned to Dr. Sandefur (who had performed his original total hip replacement) for treatment. Dr. Sandefur opined that Claimant's hardware appeared loose beyond what he would expect for time and recommended a revision. In response, surety sought additional opinion from Dr. Waters, who reaffirmed his previous opinion that the industrial accident had not resulted in loosening hardware; however, he also recommended surety obtain an opinion from a radiologist. Surety then contacted Dr. Hom, who concluded that it was more probable than not that the prosthesis had loosened, but that it was not the result of a traumatic event but rather a chronic process. Claimant obtained the opinion from Dr. Friedman, who agreed with Dr. Sandefur. Surety eventually authorized the recommended surgery on a "humanitarian basis" but it occurred some two and a half years after Dr. Sandefur originally made the recommendation. Due to Claimant's extensive prior injuries and documentation from the Colorado workers compensation system, no additional disability was apportioned to the industrial injury.

TAKEAWAY

Attorney fees were awarded in this case even though Defendants had a medical opinion to support their position. The reasoning behind it was that the opinion of the Defendants' experts were contradictory – specifically that one seemed to say the hardware had not loosened and the other said the hardware was loose but not due to the industrial injury.

RICARDO CORTES, Claimant, v. SWIFT TRANSPORTATION COMPANY, INC., Employer, and ACE AMERICAN INSURANCE COMPANY, Surety, Defendants - IC 2015-013491 filed May 24, 2018

ISSUES

The issues to be decided by the Commission are:

1. Whether Claimant is entitled to additional medical benefits; specifically total knee replacement, due to his industrial accident.
2. Whether Claimant is entitled to temporary disability benefits due to his industrial accident.
3. Whether Claimant has reached maximum medical improvement and the date thereof.

All other issues are reserved.

CONTENTIONS OF THE PARTIES

All parties acknowledge Claimant suffered an industrial accident at work on May 19, 2015, and injured his right knee. Defendants paid for surgical repair of Claimant's torn right knee meniscus. He now seeks additional medical benefits for a total right knee replacement and temporary disability benefits during recovery therefrom. Defendants dispute the causation and compensability of his requested total right knee replacement surgery.

CONCLUSIONS OF LAW

1. Claimant has proven he is entitled to right total knee arthroplasty due to his industrial accident.
2. Claimant has proven he is entitled to temporary disability benefits during his recovery from his proposed right total knee arthroplasty.
3. Claimant has not yet reached maximum medical improvement.

SYNOPSYS OF FINDINGS

Claimant had extensive pre-existing degenerative arthritis in both his right and left knee and a history of knee surgeries in the 1970s when he was a professional soccer player in Mexico. He testified that his right knee was asymptomatic for 30+ years following the surgeries. The injury occurred when boxes fell from a pallet and struck Claimant's right knee. Claimant eventually received an arthroscopic right knee partial lateral meniscectomy performed by Dr. Nicola. During the post-surgery physical therapy, Claimant felt a "pop" during one of the sessions and began to have an increase in pain which did not improve. After obtaining further imaging, Dr. Nicola recommended a total right knee arthroplasty; however, he related this to Claimant's pre-existing degenerative arthritis rather than the industrial injury. Claimant retained Dr. Kristensen to support his position. Dr. Kristensen testified Claimant could have been asymptomatic prior to the industrial injury as 5-10% with degenerative arthritis are. Dr. Kristensen felt the industrial injury hastened the need for the total knee.

Defendants obtained an IME from Dr. Schwartsman. Dr. Schwartsman agreed with Dr. Nicola that Claimant required a total knee and that it would not be industrially related. He felt Claimant's pre-existing arthritis caused the need for the total knee and Claimant's industrial injury did not significantly hasten the need for it.
The Commission found although his industrial accident may not be the sole or the most significant factor in producing his current need for total right knee arthroplasty, it accelerated that need. The Commission followed Dr. Kristensen's conclusion: "given that [Claimant] was asymptomatic prior to his industrial injury and has never been restored to his pre-injury status, the need for his total knee arthroplasty is directly related to his industrial injury."

TAKEAWAY

This is a classic "in for a penny, in for a pound" case. While Dr. Schwartzman did not feel the injury "significantly" hastened the need for the total knee, he did seem to concede that it may have hastened or contributed to in some minor way. It seems between that, and Dr. Kristensen's testimony that some of his patients are completely asymptomatic with extensive degenerative arthritis, along with Dr. Schwartzman not reviewing Claimant's prior records, the Commission felt the Claimant was entitled to the benefits he was seeking.

KAREN WILLIAMS, Claimant, v. STATE OF IDAHO, INDUSTRIAL SPECIAL INDEMNITY FUND, Defendant. - Filed June 20, 2018

ISSUES

The issues to be decided are as follows:
1. Whether Claimant is totally and permanently disabled by either the one hundred percent method or the odd-lot doctrine; and, if so
2. Whether ISIF is liable for a portion of that total disability; and, if so
3. Apportionment under the Carey formula.

CONTENTIONS OF THE PARTIES

Claimant contends that she is unable to return to her time-of-injury job as an animal control officer and as a result is totally and permanently disabled as an odd-lot worker. Her prior left knee injuries have combined with her last left knee injury (and a failed TKA) and chronic pain syndrome to render her totally and permanently disabled. Further, her use of alcohol and marijuana to self-medicate her chronic pain and depression has taken her out of the labor force. ISIF contends that this is an employer's case; not an ISIF case. Claimant and her treating physician discussed the probability that she would eventually need a left knee TKA as far back as 2011 mainly due to arthritis. Claimant has never reached MMI regarding her left knee and, consequently, has no preexisting impairment to combine with her last industrial accident to cause total and permanent disability. She should have never been released to return to work without restrictions as she has never been medically stable although she was in fact so released shortly before her last accident. However, she was doing mostly administrative office work upon her release to return to work rather than working in the field.

While ISIF concedes that Claimant cannot return to being an animal control officer, they contend that she can perform sedentary work if she gets her GED, brushes up her keyboarding skills, and arranges for counseling to help control her depression. Claimant lives in a vibrant labor market (Coeur d'Alene and Spokane Valley), is very bright and presents well. She has not followed up with Washington and Idaho vocational rehabilitation services. Subjectively, Claimant's pain issues may prevent even sedentary employment; however, objectively she can perform such work.

CONCLUSIONS OF LAW

1. Claimant has failed to prove that she is totally and permanently disabled.
2. The Complaint against ISIF is dismissed with prejudice.
3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

SYNOPSYS OF FINDINGS

Claimant suffered multiple left knee injuries which occurred in 2009, 2011, and 2012. In 2012, Claimant underwent a TKA which failed and resulted in chronic pain syndrome. Claimant began to use alcohol and marijuana to cope with her pain. Prior to the hearing, Claimant settled with

surety. Claimant retained Doug Crum, and ISIF retained Bill Jordan to present vocational evidence. Referee Powers found that Claimant failed to prove total disability either with the 100% method or odd lot. Specifically, Referee Powers stated that Claimant did not show it would be futile to look for work.

TAKEAWAY

While there are a number of creative legal arguments in the contentions of the parties, the Claimant could not convince the Commission she was totally and permanently disabled making them moot. If nothing else, it is a reminder that Claimant does not need to rely on the futile prong to establish odd lot when there are more objective methods to get there.

LANE TEACHOUT, Claimant, v. STRYKER CORPORATION, Employer, and OLD REPUBLIC INSURANCE CO., Surety, Defendants - IC 2016-018860 filed August 27, 2018

ISSUES

The issues to be decided are as follows:
1. Whether Claimant contracted a compensable occupational disease arising out of his employment, and, if so,
2. Whether Claimant gave Stryker timely notice of the same; and, if not,
3. Whether Defendants were prejudiced by the untimely notice.

CONTENTIONS OF THE PARTIES

Claimant contends that he suffered a compensable occupational disease, bilateral deep vein thrombosis resulting in pulmonary emboli (DVT/PE), as the result of frequent air travel required by his work as a Medical Education Consultant for Stryker's Foot and Ankle Division.

Stryker contends that Claimant has failed to prove that his DVT/PE was caused by his employment or that such condition was characteristic of and peculiar to that employment. Even if Claimant can surmount the causation question, his claim must still fail because he did not give timely notice to Stryker that his condition was work-related and has not rebutted the presumption that Defendants were prejudiced thereby.

Claimant responds by asserting that he gave appropriate notice to his immediate supervisor that his DVT/PE was work-related and even if he did not, Stryker had actual knowledge of the same. Finally, Claimant has proven that if proper notice was not given that Stryker/Surety was not prejudiced thereby.

CONCLUSIONS OF LAW

1. Claimant did not give timely written notice of his occupational disease, but such failure is excused by Employer's actual knowledge of the same within sixty (60) days following the date of first manifestation;
2. Claimant has proven all elements of his occupational disease claim except the following:
a. Whether he suffers from an acute versus non-acute occupational disease, and, if the latter;
b. Whether he was exposed to the hazards of the disease for a period of sixty (60) calendar days.
3. Pursuant to Idaho Code § 72-714(3), the Commission retains jurisdiction in this matter. The parties are directed to adduce additional proof on the issues referenced in (2) above. The Referee shall set a telephone conference in the near future to discuss how such additional proof may be adduced, whether further hearing is required, and setting a briefing schedule.

SYNOPSYS OF FINDINGS

Claimant began a new position as technical support to orthopedic surgeons in early 2016. The position required him to fly multiple times a week from city to city to assist physicians. The position was to be based in Austin, but Claimant initially remained in Boise requiring him to fly even more. While Claimant flew multiple times a week during this time, the testimony was unclear on how many days he actually flew. While presenting to the doctor for shortness of breath, Claimant was diagnosed with bilateral deep venous thrombosis and massive bilateral saddle pulmonary emboli. Claimant's primary doctor, Dr. Nassar eventually concluded that Claimant's condition was due to flying for his employment. Claimant's direct supervisor testified that Claimant had told him about the causation opinion shortly thereafter, albeit a vague memory. The Commission found that this satisfied the notice requirement by providing actual notice to the employer. The other issues were reserved for the time being as the Commission felt the evidence was unclear whether the occupational disease was "acute" and if not, whether Claimant suffered 60 days of actual exposure. The Commission exercised its investigational power under I.C. § 72-714(3) to require the parties to provide additional evidence.

TAKEAWAY

This case does not really expand or redact the current law as far as notice, but reaffirms that evidence of actual knowledge is sufficient.