

Ronald Goodwin v. AmeriGas Propane

(September 10, 2013)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Ronald Goodwin

Opinion No. 21-13WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

AmeriGas Propane

For: Anne M. Noonan
Commissioner

State File No. CC-60273

OPINION AND ORDER

Hearing held in Montpelier, Vermont on April 26, 2013

Record closed on May 29, 2013

APPEARANCES:

Steven Adler, Esq., for Claimant

Erin Gilmore, Esq., for Defendant

ISSUE PRESENTED:

Did Claimant's April 6, 2011 work injury cause or accelerate his need for a total right knee replacement?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: *Curriculum vitae*, Dougald MacArthur, D.O.

Claimant's Exhibit 2: *Curriculum vitae*, Ben McCormack, P.T.

Claimant's Exhibit 3: Medical records

Defendant's Exhibit A: *Curriculum vitae*, John Johansson, D.O.

CLAIM:

Permanent partial disability benefits pursuant to 21 V.S.A. §648

Medical benefits pursuant to 21 V.S.A. §640

Costs and attorney fees pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was his employer as those terms are defined in Vermont Compensation Act.
2. Judicial notice is taken of all relevant forms contained in the Department's file relating to this claim.
3. Claimant began working for Defendant in 2003 as a propane gas delivery driver. His duties included pulling the propane delivery hose from the truck to the delivery site under all weather conditions. As he credibly explained, when fully coiled at the truck the hose weighed only two or three pounds. However, as he pulled it further and further from the truck its weight increased to 20 or 30 pounds.
4. Claimant held his full time position continuously until he suffered a work injury to his right knee on April 6, 2011. On that date, as he was traversing a four to five foot snow bank making a delivery, he fell through the snow. At this point the hose weighed close to thirty pounds. As he fell, his right leg and knee twisted sideways and he felt a "snap." Claimant struggled to get out of the snow bank. The next day he could not straighten his knee and sought treatment.
5. Defendant accepted Claimant's April 6, 2011 right knee injury as compensable and paid workers' compensation benefits accordingly.¹

Claimant's Prior Medical History

6. Claimant is a large man, standing more than six feet tall and weighing approximately 300 pounds. His weight has been consistent for most of his life. He suffers from diabetes and preexisting osteoarthritis in both knees.
7. In 2007 Claimant suffered a work injury to his left knee. As a result, he underwent arthroscopic surgery to repair a complex tear of his medial meniscus. The surgery was successful and his rehabilitation uncomplicated. Claimant credibly testified that his left knee was fine as of the date of the hearing.
8. Notwithstanding the preexisting osteoarthritis in his right knee, prior to his April 2011 work injury Claimant had not sought medical care for that knee. He was able to complete the tasks of his heavy duty job without complaint.

¹ Certain medical bills (not related to Claimant's right total knee replacement surgery) remained outstanding as of the formal hearing. As those bills are the subject of a separate administrative penalty hearing, the parties have agreed that the issues surrounding their payment need not be addressed in this forum.

Claimant's Course of Treatment

9. Claimant first treated for his April 2011 injury at Littleton Regional Hospital, complaining of significant pain, swelling and locking in his right knee. Soon thereafter he was referred to Dr. Howard, an orthopedic surgeon. In May 2011 he underwent extensive surgical repair of his right knee.
10. Dr. Howard's surgery revealed that Claimant had suffered a severe "bucket handle" tear of his medial meniscus. In this type of injury, the meniscus tears and flips to the center of the knee, like a bucket handle moving from one side to the other. Dr. Howard also removed loose bodies and repaired damage to the patellofemoral joint.
11. Over the course of the next year, Claimant treated consistently with Dr. Howard. He participated in rigorous physical therapy, aquatic therapy and injections. None of these conservative treatments alleviated the pain and loss of function Claimant experienced from his work injury.
12. In an April 2012 office note, Dr. Howard wrote that Claimant had developed post-traumatic osteoarthritis in his right knee. An x-ray taken that month showed Claimant's right knee joint was bone on bone. In Dr. Howard's opinion, any treatment short of a total knee replacement would be a waste of time and money. However, given Claimant's young age and the limited life span of a prosthetic knee replacement, Dr. Howard was reluctant to proceed.
13. Having raised the possibility early in his treatment that Claimant ultimately would require a total knee replacement, in May 2012 Dr. Howard informed him that this was now his only treatment alternative. Claimant credibly testified that he needed to work for 10 to 15 more years, so he agreed to the surgery.
14. Notwithstanding Defendant's denial of coverage, Claimant underwent right total knee replacement surgery in June 2012. Following extensive rehabilitation, he was able to return to work in December 2012.

Expert Medical Opinions

15. The parties presented conflicting expert opinions as to the causal relationship, if any, between Claimant's April 2011 work injury and his need for a total knee replacement.
 - (a) Dr. MacArthur
16. Dr. MacArthur is the orthopedic surgeon who assumed Claimant's care after Dr. Howard's death in October 2012. Prior to his testimony, Dr. MacArthur reviewed all of Claimant's relevant medical records.

17. In Dr. MacArthur's opinion, Claimant's need for a total right knee replacement was causally related to his work injury. Notwithstanding his preexisting osteoarthritis, his right knee had been totally asymptomatic prior to his April 2011 work injury. That injury caused what Dr. MacArthur described as a "massive" bucket handle tear. To repair the tear, most of Claimant's meniscus had to be removed. This drastically changed the mechanics of the joint, which in turn accelerated the need for a total knee replacement. Thus, according to Dr. MacArthur, once the severity of the work-related tear became evident, it was clear that Claimant would require a prosthetic joint. I find Dr. MacArthur's analysis very credible.

(b) Dr. Johansson

18. Dr. Johansson is an osteopath who specializes in orthopedic medicine, especially acute and chronic pain. At Defendant's request, he performed two independent medical examinations, one in May 2012 and again in November 2012. In conjunction with his examinations, Dr. Johansson reviewed all of the pertinent medical records.
19. In Dr. Johansson's opinion, Claimant's need for a total knee replacement was primarily due to his obesity, age and diabetes. According to his analysis, these medical conditions accelerated the progression of Claimant's osteoarthritis, which in turn caused the need for his knee replacement surgery. Dr. Johansson classified Claimant's work injury as minor; in essence, he "tweaked" his knee and did not suffer an acute injury.
20. Dr. Johansson conceded in his formal hearing testimony that Claimant's need for a total knee replacement was due to a combination of factors, including not only his obesity and age but also the trauma suffered as a result of the April 2011 work incident. Notwithstanding his description of Claimant's work injury as minor, I find from this testimony that Dr. Johansson thus acknowledged a causal relationship between the work injury and the surgery, albeit a minor one.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).
2. The issue presented in this case is whether Claimant's need for a total right knee replacement was caused or accelerated by his April 2011 work injury. Defendant contends that the surgery was necessitated by Claimant's obesity, diabetes, age and preexisting osteoarthritis, not by his work injury. Claimant argues that the work injury both contributed to and accelerated his need for joint replacement surgery.

3. The parties presented conflicting expert opinions on this issue. In such cases, the commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).
4. I conclude, based primarily on the third factor, that Dr. MacArthur's opinion was more persuasive than Dr. Johansson's. What is most compelling about Dr. MacArthur's opinion is that, despite the fact that Claimant already suffered from obesity, diabetes and osteoarthritis, prior to the April 2011 work injury he was able to perform heavy labor with no complaints whatsoever in his right knee. It stands to reason that the work injury, which resulted in the loss of most of his meniscus and a consequent alteration in the mechanics of the joint, was at least partly responsible for his pain and loss of function thereafter.
5. Indeed, even Dr. Johansson acknowledged as much. While his primary opinion was that Claimant's need for a knee replacement was due to preexisting conditions such as obesity, Dr. Johansson conceded that the trauma caused by the April 2011 work injury was a contributing factor as well. Rather than detracting from Dr. MacArthur's analysis, Dr. Johansson's opinion thus supports it.
6. The Vermont Supreme Court has instructed:

When considering a progressively degenerative disease such as osteoarthritis, where "the disease, if left to itself, and apart from any injury, would, in time, have inevitably caused a complete disability," the causation test becomes whether, due to a work injury or the work environment, "the disability came upon the claimant earlier than otherwise would have occurred."

Stannard v. Stannard, 2003 VT 52 ¶11 (May 29, 2003), citing *Jackson v. True Temper Corp.*, 151 Vt. 592, 596 (1989) (internal quotations and citations omitted).

7. The injured worker in *Stannard*, a plumber, had suffered several injuries that aggravated and accelerated the underlying osteoarthritis in his knees during the ten years during which the defendant-insurer was on the risk. Thereafter, he worked at the same job for an additional three years, during which two other carriers were on the risk, before undergoing knee replacement surgery. Noting that by this time his condition already had become markedly symptomatic, such that the surgery already had become inevitable, the Supreme Court held that his continued work had not contributed in any way to his underlying disability. As there had been no subsequent aggravation or acceleration, the Court concluded, the earlier carrier remained responsible.

8. The facts in this case justify a different result. Here, Claimant's preexisting osteoarthritis had been completely asymptomatic until the work injury caused a specific, objectively verifiable new trauma to the joint, resulting in immediate, ongoing pain, swelling and loss of function. Under these circumstances, it is not necessary to guess when, if ever, Claimant would have come to knee replacement surgery had the work injury never occurred. It is enough to know that as a consequence of the work injury, he came to it sooner than he otherwise would have.
9. I conclude that Claimant has sustained his burden of proving that his April 2011 work injury accelerated his need for total right knee replacement surgery.
10. As Claimant has prevailed on his claim for benefits, he is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit his itemized claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. Medical benefits covering all medical services and supplies causally related to Claimant's total right knee replacement in accordance with 21 V.S.A. §640;
2. Permanent partial disability benefits to be determined at such point as Claimant reaches an end medical result for his compensable right knee condition, in accordance with 21 V.S.A. §648; and
3. Costs and attorney fees in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 10th day of September 2013.

Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.