Sharon Dobson Ethan Allen Interiors Inc. (July 25th, 2014)

STATE OF VERMONT
DEPARTMENT OF LABOR

Sharon Dobson

v.

Ethan Allen Interiors, Inc.

Opinion No. 11-14WC

By: Jane Woodruff, Esq.
Hearing Officer

For: Anne M. Noonan
Commissioner

State File No. Z-56664

OPINION AND ORDER

Hearing held in Montpelier, Vermont on March 28, 2014
Record closed on May 3, 2014

APPEARANCES:

Steven Adler, Esq., for Claimant
Andrew Boxer, Esq., for Defendant

ISSUE PRESENTED:

Is total knee replacement surgery reasonable and necessary medical treatment for Claimant's work-related left knee condition?

EXHIBITS:

Joint Exhibit I:	Medical records
Claimant's Exhibit 1:	Letter from Dr. O'Neill, March 5, 2014
Claimant's Exhibit 2:	American Academy of Orthopedic Surgeons, information page
Claimant's Exhibit 3:	Treatment timeline
Claimant's Exhibit 4:	List of references to Joint Exhibit I
Claimant's Exhibit 5:	*Curriculum vitae*, Dr. Spina
Claimant's Exhibit 6:	*Curriculum vitae*, Dr. MacArthur
Defendant's Exhibit A:	American Academy of Orthopedic Surgeons, appropriate use criteria
Defendant's Exhibit B:	Left knee x-ray, March 6, 2014
Defendant's Exhibit C:	Left knee x-ray, upright view
Defendant's Exhibit D:	Left knee x-ray, bent knee view
Defendant's Exhibit E:	Right and left knee x-ray, upright view
Defendant's Exhibit F:	Left knee x-ray, top view

CLAIM:

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 her employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Judicial notice is taken of all relevant forms contained in the Department's file relating to this claim.

3. Claimant worked for Defendant for 22 years; her last position was that of final inspector on the production line. On November 29, 2007 she was inspecting an armoire when it fell onto and over her. The bottom of the armoire remained on the tracks and Claimant's workbench stopped it from falling completely on top of her. The drawers of the armoire, in Claimant's credible words "nailed her on her left knee."

Claimant's Course of Treatment

4. Claimant experienced significant pain and that day applied ice packs to her knee. She sought medical attention on December 3, 2007 in the emergency department of her local hospital. The physician diagnosed her with a knee contusion, noting mild swelling, a mild limp and a slight hematoma. Claimant was released to return to sedentary work.

5. Over the next week Claimant returned twice to the emergency department complaining of knee pain without improvement. Thereafter she was referred to Dr. Spina, an orthopedic surgeon. He diagnosed her with a patellar contusion with subsequent traumatic bursitis and referred her to physical therapy.

6. Despite time, rest and physical therapy, Claimant's left knee pain did not improve. In January 2008 an MRI revealed a complex tear in the posterior horn of her medial meniscus. Dr. Spina performed a diagnostic and therapeutic arthroscopy in February 2008. He found Grade III articular cartilage injury to the patella and widespread Grade III articular cartilage damage to the medial femoral condyle.

7. Over the course of the next year, Claimant participated in physical therapy and received cortisone injections to her left knee. During this entire time she reported no improvement in her pain levels. She saw several different physicians in an attempt to improve her condition, all to no avail.

8. In January 2009 Claimant saw Dr. O'Neill, a knee specialist at the Alpine Clinic. In Dr. O'Neill's opinion, she presented a difficult case. Despite excellent care, her knee was not "cooperating." Dr. O'Neill recommended a repeat diagnostic arthroscopy. If that surgery did not alleviate her symptoms, Dr. O'Neill advised that a total knee replacement might be necessary.

9. Dr. O'Neill performed a second arthroscopy in March 2009. During the surgery, he observed Grade III changes diffusely on the medial femoral condyle, as Dr. Spina had during Claimant's February 2008 arthroscopy. Dr. O'Neill made a lateral release and removed adhesions. Believing that the adhesions were the source of Claimant's pain, he was optimistic about her prognosis.

10. After feeling better initially, Claimant's pain returned. Again, physical therapy and injections over the next 18 months did not improve her condition.

11. Claimant returned to Dr. Spina's care in September 2010. His diagnosis was progressive degenerative arthritis of the medial and patellofemoral compartments of the left knee.

12. After additional x-rays and an MRI, Dr. Spina recommended a third exploratory and diagnostic arthroscopy. This surgery, performed in February 2011, consisted of a chondroplasty with microfracture to promote new cartilage growth. During this surgery Dr. Spina noted widespread Grade III and IV degenerative changes on the weight-bearing surface of the medial femoral condyle, which was the site of the original work injury.

13. Claimant engaged in regular physical therapy and showed some improvement. However, from May through November 2011, as Claimant followed up with Dr. Barnard, an orthopedic surgeon, she complained of aching, burning and at times stabbing knee pain. Her objective signs were all normal, however. Dr. Barnard did not think any further surgery was warranted and instead recommended more physical therapy.

14. In August 2011 Claimant saw Dr. Glorieux-Sullivan, another orthopedic surgeon, who filled in for Dr. Barnard. Dr. Glorieux-Sullivan reported that since her work injury Claimant had suffered four years of persistent left knee pain, which severely limited her activities of daily living. Nevertheless, her MRI did not reveal sufficiently abnormal findings to justify a total knee replacement. For that reason, Dr. Glorieux-Sullivan did not think further surgery was warranted.

15. In a November 2011 office visit with Dr. Barnard, Claimant continued to complaint of stabbing pain and knee buckling that caused her to fall. As he did not have much to offer her, Dr. Barnard advised her to seek a second opinion at Dartmouth-Hitchcock Medical Center.

16. At DMHC Claimant saw Dr. Bernini, an orthopedic surgeon specializing in knees. Dr. Bernini reviewed Claimant's x-rays and examined her. He believed her symptoms were far in excess of what her exams and x-rays demonstrated. Concerned that Claimant might have developed complex regional pain syndrome, Dr. Bernini felt that further surgery was the worst possible intervention for her.

17. At Defendant's request, in March 2012 Claimant underwent an independent medical examination with Dr. Boucher, a specialist in occupational medicine. Dr. Boucher diagnosed Claimant with left patellofemoral chondromalacia, with an additional component of somatization disorder. That is, he thought Claimant's pain was "non-negotiable," and out of proportion both to her physical findings and to the findings on her diagnostic studies. Dr. Boucher did not believe Claimant required any further medical treatment other than over-the-counter analgesics and exercise. In his opinion she had reached an end medical result, with a three percent whole person permanent impairment attributable to atrophy in her left quadriceps muscles.

18. Claimant next saw Jason Raehl, a physician's assistant at the Alpine Clinic, in June 2012. New x-rays revealed advanced patellofemoral arthritis, to the point that her knee was bone on bone. Given that Claimant had exhausted all possible conservative treatments, Mr. Raehl referred her to Dr. MacArthur, also at the Alpine Clinic, for a consultation. Dr. MacArthur is a board certified orthopedic surgeon with a subspecialty in total joint replacements. Over the course of his career, he has replaced at least 2,000 knees.

19. Claimant first saw Dr. MacArthur in October 2012. He diagnosed her with osteoarthritis of the left knee with primary bone on bone changes. These changes affected the manner in which the patellofemoral joint came together and, in his opinion, were likely what caused most of Claimant's knee pain. I find this analysis credible.

20. For treatment Dr. MacArthur offered Claimant three options: (1) "benign neglect," that is, pain management via non-steroidal anti-inflammatory agents and activity modification; (2) patellofemoral joint replacement surgery; or (3) total knee replacement. As between the two surgical options, Dr. MacArthur voiced a stronger preference for a total knee replacement, because it has a history of better outcomes than patellofemoral joint replacement surgery. I find this analysis credible.

21. Dr. MacArthur next saw Claimant in October 2013. New x-rays showed that the arthritis in her left knee seemed to be progressing radiologically. Dr. MacArthur continued to believe that a total knee replacement was the treatment of choice.

Expert Medical Opinions

22. The parties presented conflicting expert opinions on the issue whether a total knee replacement constitutes reasonable treatment causally related to Claimant's work injury.

(a) Dr. Spina

23. In Dr. Spina's opinion, Claimant's best treatment option at this time is total knee replacement. She continues to suffer from pain, both activity-related and, more recently, when at rest while sleeping as well. In the course of his February 2011 arthroscopy (Claimant's third such surgery), Dr. Spina visualized a wide area of bone-on-bone involvement in her knee, which he suspects is the cause of her pain. Having already undergone both conservative therapies and multiple arthroscopies without effective resolution of her symptoms, Dr. Spina thus believes that a total knee replacement is now medically necessary. I find this opinion credible.

(b) Dr. MacArthur

24. In Dr. MacArthur's opinion, there is "no doubt" that Claimant needs a total knee replacement and that the procedure will "very, very likely alleviate her symptoms." He conceded that she is relatively young for the procedure and that it is an option of last resort. However, given that she has "toughed out" her pain since the original work injury in 2007, and also that she has exhausted all other conservative treatment alternatives, a total knee replacement presents the best remaining treatment available to her. That historically, total knee replacement surgeries have an 85 to 90 percent success rate makes it an even stronger option. I find this analysis credible.

25. In rendering his opinion, Dr. MacArthur acknowledged that he did not review the medical records of Drs. Barnard, Glorieux-Sullivan or Bernini. Having consulted with his practice partner, Dr. O'Neill, he felt that it was unnecessary for him to do so. Dr. O'Neill informed him that the degeneration he visualized while performing Claimant's second arthroscopic surgery was even worse than what her x-ray showed. Actually visualizing the knee is widely accepted as the gold standard for diagnosing the extent of degeneration. Thus, with the benefit of Dr. O'Neill's surgical observations, Dr. MacArthur was confident that his opinion was well-supported, and his treatment recommendation justified.

26. Dr. MacArthur buttressed his opinion with objective findings. As shown on her 2012 x-ray, Claimant's left knee joint was bone on bone medially and laterally (that is, on both sides). In addition, Drs. Spina and O'Neill both had observed Grades III and IV cartilage damage in the course of their respective arthroscopic surgeries. According to Dr. MacArthur, Claimant's prior surgeries served to "buy her some time." Unfortunately, however, as she is no longer tolerating her pain, the joint now needs to be replaced. Dr. MacArthur was credible in all respects in this testimony.

(c) Dr. Glorieux-Sullivan

27. Dr. Glorieux-Sullivan testified by deposition. In her opinion, which she limited to her knowledge of Claimant's condition as of August 2011,[1] Claimant is not an appropriate candidate for a total knee replacement. First and foremost, at age 53 she is a relatively young patient for such a procedure. The lifespan of a total knee replacement is twenty years. Thus, the possibility exists that she will need revision surgery, which is more invasive and carries the risk of more complications, when she is 73 years old. With that in mind, and considering also the apparent lack of significant disease in Claimant's knee, Dr. Glorieux-Sullivan recommends against the procedure.

(d) Dr. Sobel

28. At Defendant's request, Dr. Sobel, a board certified orthopedic surgeon, performed a records review in Claimant's case in April 2013, followed by an in-person independent evaluation in May 2013. Dr. Sobel diagnosed Claimant with a contusion of the distal quadriceps as well as a contusion of the superior patella.

29. In Dr. Sobel's opinion, total knee replacement surgery is not a reasonable and necessary treatment in this case. He based his opinion on the following:

- Throughout all of her treatment, Claimant's objective findings revealed a relatively normal knee with typical age-related wear and tear patterns;
- The work injury did not cause severe trauma, as evidenced by the lack of significant abrasion, hemarthrosis, effusion or ligamentous injury reported in the first operative report;
- Claimant's ongoing subjective reports of pain have not been supported by objective examination or diagnostic tests and therefore suggest somatization and/or symptom exaggeration on her part;
- Four previous orthopedic surgeons have advised against a total knee replacement, and three previous arthroscopies have failed to relieve her pain; and
- According to his analysis, the medical records do not document bone on bone end stage arthritis.

[1] Dr. Glorieux-Sullivan did not review any of Claimant's medical records subsequent to her August 2011 visit.

30. Dr. Sobel conceded that in order to assess the condition of a patient's knee joint, direct visualization is preferable to reviewing an x-ray. That both Dr. Spina and Dr. O'Neill were able to visualize objective findings during their surgeries thus weakens Dr. Sobel's conclusion that Claimant was exaggerating her symptoms, therefore. Dr. Sobel also failed to document the bone on bone status of Claimant's knee as shown in the x-rays taken in conjunction with her June 2012 evaluation, Finding of Fact No. 18 *supra*. This omission further undermines his conclusions.

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. Vermont's workers' compensation statute obligates an employer to pay only for those medical treatments that are determined to be both "reasonable" and causally related to the compensable injury. 21 V.S.A. §640(a); *MacAskill v. Kelly Services*, Opinion No. 04-09WC (January 30, 2009). The commissioner has discretion to determine what constitutes "reasonable" medical treatment given the particular circumstances of each case. *Id.* A treatment can be unreasonable either because it is not medically necessary or because it is not related to the compensable injury. *Baraw v. F.R. Lafayette, Inc.*, Opinion No. 01-10WC (January 20, 2010).

3. The sole issue presented in this case is whether left total knee replacement surgery is reasonable medical treatment for Claimant's 2007 work injury.[2] The parties presented conflicting expert medical testimony on this question. 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).

[2] Defendant did not contest that Claimant's left knee condition was causally related to her compensable work injury.

4. Relying primarily on the third factor, I conclude that the opinions of Drs. Spina and MacArthur are more credible than the opinions of Drs. Glorieux-Sullivan and Sobel. Drs. MacArthur's and Spina's opinions were clear and thorough. More important, they were based on the objective findings that each of Claimant's three arthroscopies revealed. For these reasons, I conclude that they were more compelling.

5. In contrast, Dr. Glorieux-Sullivan's opinion was dated and specifically limited to what she knew of Claimant as of August 2011. She thus failed to take into account both the worsening appearance of Claimant's knee joint, as documented in the June 2012 x-rays, and Claimant's worsening symptoms, which now include pain even at rest. For those reasons, her opinion is of questionable usefulness.

6. As for Dr. Sobel, his analysis lacks the benefit of having directly visualized Claimant's knee joint, which even he admitted was preferable to merely viewing it on x-ray. As such, his opinion does not carry as much weight as Dr. Spina's.

7. The determination whether a treatment is reasonable must be based primarily on evidence establishing the likelihood that it will improve the patient's condition, either by relieving symptoms and/or by maintaining or increasing functional abilities. *Quinn v. Emery Worldwide*, Opinion No. 29-00WC (September 11, 2000). Based on Dr. MacArthur's credible opinion, I conclude here that a total knee replacement is very likely to alleviate Claimant's symptoms.

8. This is not a case, as Defendant argues, where the three prior failed surgeries contraindicate a fourth surgery. *See Simmons v. Landmark College*, Opinion No. 07-13WC (March 6, 2013). The cervical surgeries in that case were intended to cure the claimant's pain, but failed to do so. The treating surgeon hoped that a fourth surgery would be more effective. However, lacking any objective basis for concluding that the area of the proposed fourth surgery was actually the pain generator, her opinion was deemed unpersuasive. On those grounds, the Commissioner determined that the surgery did not constitute reasonable medical treatment.

9. In contrast, the three surgeries Claimant previously has undergone here were intended primarily to "buy her some time" before a total knee replacement became necessary. Indeed, as early as January 2009 Dr. O'Neill predicted that if her second surgery failed to alleviate her symptoms ultimately Claimant would require a total knee replacement. That time has now arrived; total knee replacement surgery has become the treatment of choice.

10. I conclude that Claimant has sustained her burden of proving that total knee replacement surgery constitutes reasonable medical treatment for her compensable work-related injury. Under 21 V.S.A. §640, Defendant is therefore obligated to pay for it.

11. As Claimant has prevailed on her claim for benefits, she 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 her 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 reasonable medical services and supplies associated with a total left knee replacement in accordance with 21 V.S.A. §640; and

2. Costs and attorney fees in amounts to be determined, in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 25th day of July 2014.

_____
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.