

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Anne Charron

Opinion No. 12-21WC

v.

By: Beth A. DeBernardi  
Administrative Law Judge

Allied Healthcare Services, Inc.

For: Michael A. Harrington  
Commissioner

State File No. MM-00767

**OPINION AND ORDER**

Hearing held via Microsoft Teams on January 26, 2021  
Record closed on February 25, 2021

**APPEARANCES:**

Daniel D. McCabe, Esq., for Claimant  
Jason R. Ferreira, Esq., for Defendant

**ISSUE PRESENTED:**

Did Claimant sustain a compensable work-related right knee injury on January 3, 2020?

**EXHIBITS:**

Joint Exhibit I:	Joint Medical Exhibit (“JME”)
Claimant’s Exhibit A:	Independent medical examination report of William Spina, MD
Claimant’s Exhibit B:	<i>Curriculum vitae</i> of William Spina, MD
Defendant’s Exhibit 1:	Denial of workers’ compensation benefits in New Hampshire
Defendant’s Exhibit 2:	January 3, 2020 Team Member Occupational Injury Report
Defendant’s Exhibit 3:	January 6, 2020 Supervisor Occupational Injury Report
Defendant’s Exhibit 4:	<i>Curriculum vitae</i> of Douglas Kirkpatrick, MD
Defendant’s Exhibit 5:	Medical records review report of Douglas Kirkpatrick, MD
Defendant’s Exhibit 6:	Preservation deposition of Jonathan Blair Preston

**CLAIM:**

Temporary disability benefits pursuant to 21 V.S.A. §§ 642 and 646  
Permanent partial disability benefits pursuant to 21 V.S.A. §§ 644 and 645  
Medical benefits pursuant to 21 V.S.A. § 640(a)  
Costs and attorney fees pursuant to 21 V.S.A. § 678

## **FINDINGS OF FACT:**

1. At all relevant times, Claimant was an employee and Defendant was her employer as those terms are defined in the Vermont Workers' Compensation Act.
2. I take judicial notice of all forms in the Department's file relating to this claim.
3. Claimant is a 46-year-old woman who lives in Lyndonville, Vermont. Since the summer of 2019, she has been employed by Defendant as a patient coordinator in its mobile imaging unit. Her job duties include greeting patients, checking them in for medical imaging, escorting them to and from the scanning table, and entering patient information into the computer system.

### *Claimant's Work Environment*

4. Defendant's mobile imaging units are 18-wheeled trailers outfitted with medical imaging equipment. These units provide imaging services to smaller medical facilities and rural communities. The inside of each unit is about 60 feet long, with a ceiling 10 to 12 feet high. The trailer's roll up door is 8 feet wide.
5. In January 2020, Claimant worked in a PET scan unit outside the Weeks Medical Center in Lancaster, New Hampshire. The unit included a patient scanning area, a laboratory, and an L-shaped workstation for paperwork and data entry. Claimant worked in the unit with nuclear medicine technologist Jonathan Blair Preston.
6. Claimant performed data entry on a computer placed in the center of the L-shaped workstation. A fax machine was on the left, and her paperwork was on the right. Underneath the left side of the workstation was a power supply, and underneath on the right was a rubber tote containing small water bottles. According to Mr. Preston's credible testimony, the items under the workstation did not prevent the workstation user from putting his or her legs under the desk. The desktop was cluttered, but the workstation itself was not cramped.
7. When she performed data entry, Claimant would sit at the workstation with her right leg crossed over her left. She would also sit with her legs crossed at home and in other non-work settings.

### *Onset of Claimant's Right Knee Pain on January 3, 2020*

8. On the morning of January 3, 2020, Claimant experienced the sudden onset of right knee pain at work. She waited about 30 minutes to see whether her pain would subside. When it did not, Mr. Preston contacted Weeks Medical Center and asked someone to come over to the mobile unit with a wheelchair to transport Claimant to the Emergency Department.
9. Claimant has provided varying accounts of her January 3, 2020 knee pain. At the hearing, she testified that she was sitting at the workstation and performing data entry, with her right leg crossed over her left, when she felt the sudden onset of right knee

pain. The pain caused her to “jump up” and try to straighten her leg. Claimant’s testimony as to this mechanism of injury was emphatic, detailed and unequivocal. Further, she told the Emergency Department that her right knee “seems to have twisted out of place spontaneously.” *JME at 001*. This description is consistent with her hearing testimony. *See also JME at 58* (report to physical therapist that she was sitting in her chair at work and “all of a sudden had a shifting and intense pain in her R knee.”) Accordingly, I find that the onset of right knee pain on January 3, 2020 occurred while Claimant was sitting with her right leg crossed over her left.

*Claimant’s Right Knee Condition Prior to January 3, 2020*

10. Claimant testified that she had no history of right knee pain, symptoms or dysfunction prior to January 3, 2020.

11. The January 3, 2020, Emergency Department medical record reports the history of present illness as follows:

Patient coming in for right knee pain. Says it seems to have twisted out of place spontaneously but no[w] it is back in place totally. There is significant pain with weight bearing. There is pain with any movement of the leg. Seems to be worse on later, posterior aspect of knee. Does radiate to right ankle. Patient denies trauma. *She had this occur 20 years ago* and it has not been a problem since.

*JME at 001* (emphasis added).

12. The Emergency Department triage report includes the following patient narrative: “[S]he was sitting w/ R knee crossed over L leg at work when she noticed R knee ‘slipped out of place’....” She stated that “*this happened once before 18 years ago.*” *JME at 005* (emphasis added).

13. On January 7, 2020, physician assistant Virginia Mike noted that Claimant’s past medical history included “right knee pain.” *JME at 017*.

14. Claimant contends that each of these providers made an error when they referenced a prior knee condition in her medical records. According to her testimony, she suffered a right quadricep muscle spasm 20 years ago unrelated to her right knee. She contends that she told her providers about *that* incident, and they mistakenly reported it as a prior knee condition. I do not find this testimony credible. At the Emergency Department on January 3, 2020, Claimant likely provided relevant medical history to assist in the diagnosis and treatment of her knee. She had no reason to provide information about an unrelated muscle spasm to a different body part 20 years earlier. Further, her prior knee condition was reported at different times to the triage nurse and the hospital physician, each of whom recorded the information separately and in different language. Similarly, physician assistant Virginia Mike’s records note a past medical history of right knee pain. I do not find it credible that three medical providers all mischaracterized a quadricep muscle spasm as a prior right knee condition.

15. Former co-worker Mr. Preston also provided testimony about the January 3, 2020 incident that he witnessed. According to his account, he was working about five feet away from Claimant with his back towards her when he heard her say “ow.” He turned around and asked her what was wrong, and she said that her knee was not doing well. When he asked her what happened, she said that she has had issues with her knee for a long time and that it should be fine; she just needed time to massage the knee to get it back into place. She said that her knee sometimes “pops out,” and she characterized the condition as a “nagging thing” for which she had never sought medical treatment. *Preston Deposition*, pp. 21-22.
16. Claimant and Mr. Preston agree that they had a good relationship. Further, Mr. Preston left his employment with Defendant in September 2020, on good terms, to take a similar job at Concord Hospital. I do not discern any motive for Mr. Preston to provide false testimony, and I find his testimony credible.
17. I therefore find that Claimant had a right knee condition that predated the January 3, 2020 onset of knee pain. Her pre-existing condition caused her knee to “pop” or slide out of place periodically. Whenever that happened, she would massage her knee until the displaced structure returned to its proper position.

#### Claimant’s Subsequent Medical Course

18. Claimant sought treatment in the Emergency Department on January 3, 2020. An imaging study of her knee identified osteoarthritis and mild joint space narrowing at the medial compartment, but no acute injury. *JME at 003*. The Emergency Department physician immobilized her knee and recommended that she follow up with orthopedics. *Id.*
19. Claimant saw physician assistant Virginia Mike on January 7, 2020 and underwent an MRI on January 17, 2020. *JME at 017, 024*. The MRI found a bucket handle tear of her lateral meniscus, with the posterior horn flipped anteriorly. *JME at 024*. On February 10, 2020, Claimant underwent arthroscopic surgery to repair her knee. *JME at 039-051*. Following surgery, she underwent a course of physical therapy. *JME at 058-093; 097-140; 144-187; 191-229*.
20. Claimant was released to part-time, light-duty work on June 23, 2020. *JME at 189*. On September 15, 2020, her primary care provider noted that she had been discharged from physical therapy and had already returned to full-duty work. *JME at 233*.
21. During Claimant’s work absence, she received short-term disability benefits.

#### Expert Medical Opinions

22. The parties presented conflicting expert testimony concerning the cause of Claimant’s right knee condition and whether her condition is work-related.

William J. Spina, MD

23. Dr. Spina is a board-certified orthopedic surgeon. He graduated from the University of Vermont College of Medicine in 1978 and completed a residency in orthopedic surgery at the Royal Victoria Hospital in Montreal. He also completed a fellowship in knee and hip surgery. Dr. Spina practiced as an orthopedic surgeon for over 30 years, retiring in 2013, and has substantial experience performing meniscal tear repairs. Since his retirement, Dr. Spina has offered his services performing disability evaluations.
24. On December 15, 2020, Claimant underwent an independent medical examination with Dr. Spina, arranged by her attorney. Dr. Spina interviewed her, performed a physical examination, and reviewed her medical records. Claimant told Dr. Spina that she had no prior right knee pain or dysfunction before January 3, 2020. She also told him that she experienced the onset of right knee pain on January 3, 2020 when she stood up and straightened out her leg at work. As I have already found, both of these representations were inaccurate.
25. Dr. Spina explained that the meniscus is a C-shaped piece of cartilage that acts as a cushion and shock absorber. It moves from front to back when straightening out the knee. In his opinion, Claimant did not have a bucket handle tear of her right lateral meniscus prior to January 3, 2020. Rather, she sustained a bucket handle tear when she stood up at work on January 3, 2020. According to Dr. Spina, when the “knee is weighted in flexion and rotation [as in sitting with one’s legs crossed], it places the menisci in a susceptible position to injury.” *Claimant’s Exhibit A*, at 4. It is then when a person *gets up* from sitting or squatting that the meniscal tear occurs. He testified that a person would not suffer a bucket handle meniscus tear simply from sitting with her legs crossed, as that posture does not create enough force to cause a tear. However, a meniscus that was pre-disposed to tearing might suffer a bucket handle tear when the person straightened out her leg by standing. In his opinion, this is what happened with Claimant’s knee.
26. As Claimant did not disclose her prior knee symptoms to Dr. Spina, however, he was not in a strong position to assess the impact of her pre-existing condition on her present complaints. Further, Dr. Spina relied on Claimant’s account that her knee pain began when she stood up and straightened her leg, which was also inaccurate. Dr. Spina’s reliance on an inaccurate mechanism of injury is especially relevant in evaluating his opinion because he acknowledged that sitting with one’s legs crossed, as Claimant was sitting when she felt the onset of knee pain, does not generate enough force to cause a bucket handle tear.
27. Finally, Dr. Spina offered one more basis for his opinion that Claimant’s knee condition was work-related. He noted that she likely had pre-existing degeneration of both menisci, as is common in women her age, but that she was asymptomatic until the onset of knee pain at work on January 3, 2020. This opinion not only fails to account for Claimant’s pre-existing condition, but it also fails to address whether the conditions and obligations or her employment caused or contributed to the onset of her

knee symptoms on January 3, 2020. For all these reasons, Dr. Spina's opinions are neither thorough nor objectively supported.

Douglas P. Kirkpatrick, MD

28. Dr. Kirkpatrick is a board-certified orthopedic surgeon. He graduated from New York Medical College in 1990 and completed an orthopedic surgical residency at the New England Medical Center in 1995. He also completed a fellowship in sports medicine. Dr. Kirkpatrick practiced orthopedic surgery with North Country Orthopedic Specialists in Queensbury, New York for twenty-two years and now practices at the Glens Falls Hospital. Like Dr. Spina, Dr. Kirkpatrick has substantial experience performing meniscal repair surgeries. He is a certified independent medical examiner.
29. Dr. Kirkpatrick performed a review of Claimant's medical records pertaining to her right knee condition from January 3, 2020 through the date of his review on December 9, 2020. He also reviewed Claimant's deposition transcript, Mr. Preston's deposition transcript, Dr. Spina's report, and the two injury reports included as Defendant's Exhibits 2 and 3.
30. Dr. Kirkpatrick understands that Claimant experienced the sudden onset of right knee pain while she was seated at work on January 3, 2020, with her right leg crossed over her left. Further, he is familiar with her ultimate diagnosis of a right lateral meniscus bucket handle tear that became displaced. In Dr. Kirkpatrick's opinion, Claimant's bucket handle tear was pre-existing on January 3, 2020 and was not caused by her sitting at work with her legs crossed. Further, even if her pain began when she stood and straightened her leg, as she reported to Dr. Spina, it is Dr. Kirkpatrick's opinion that the act of straightening her leg would not have caused the bucket handle tear, either.
31. Dr. Kirkpatrick provided several bases for his opinion. First, he testified that the formation of a bucket handle tear requires a significant amount of force with a twisting component; it requires significantly more force than sitting with one's legs crossed, even if the knee has degenerative changes. As he described it, crossing one's legs is a "normal, physiologic, day-to-day activity that does not produce any substantial force on the meniscus." Similarly, straightening one's leg to stand does not place any significant force on the meniscus, either.
32. Second, Dr. Kirkpatrick considered Claimant's medical records and Mr. Preston's eyewitness account, both of which indicated that she had a history of her right knee sliding out of place. This history indicated to Dr. Kirkpatrick that Claimant's bucket handle tear predated the January 3, 2020 work incident.
33. Third, Dr. Kirkpatrick testified that the operative report from Claimant's knee surgery indicated that the compartment surrounding her lateral meniscus displayed chronic damage consistent with a pre-existing bucket handle tear moving around and abrading the cartilage. As he explained, a bucket handle tear can flip out of position and lodge into a different part of the knee joint when the patient moves his or her knee. The significant level of damage seen during Claimant's surgery did not develop in the

weeks between January 3, 2020 and her February 10, 2020 surgery, but rather indicates that she had a previously-torn meniscus with a history of moving out of position and “banging” around in her lateral compartment.

34. In Dr. Kirkpatrick’s opinion, when Claimant moved her knee at her desk on January 3, 2020, she again displaced her pre-existing bucket handle tear. This time, the torn meniscus did not return to its proper place, as it had done in the past. Dr. Kirkpatrick testified that it was “inevitable” that the displaced meniscal tear would fail to return to position sometime. In his opinion, it was mere happenstance that this occurred on January 3, 2020 and not on some other occasion when her knee slipped out of place.
35. Finally, Dr. Kirkpatrick offered his opinion that, for a patient of Claimant’s age and with her type of meniscal tear, he would recommend surgical repair even if the patient’s symptoms were minimal or non-existent because the torn meniscus moves around the lateral compartment and significantly damages the knee cartilage.
36. Thus, in Dr. Kirkpatrick’s opinion, Claimant’s pre-existing bucket handle tear slipped out of place on January 3, 2020 when she moved her knee and became displaced in such a way that she could not extend her knee. The displacement was a symptom of her pre-existing condition, not a new condition or injury. As he explained, a bucket handle tear can move in and out of position, as had likely happened to Claimant multiple times prior to January 3, 2020. In Dr. Kirkpatrick’s opinion, there was nothing unusual or occupational about the position of her knee on January 3, 2020, when the bucket handle tear again became displaced.
37. I find Dr. Kirkpatrick’s opinion to be clear, thorough and well supported by Claimant’s medical history, the mechanism of injury, and the findings of chronic lateral compartment damage set forth in the operative report.

#### Claim for Workers’ Compensation Benefits

38. Claimant filed a claim for workers’ compensation benefits in New Hampshire, where the January 3, 2020 onset of knee pain occurred. Defendant denied the claim on January 13, 2020, on the grounds that Claimant had an idiopathic injury unrelated to her employment. *Defendant’s Exhibit 1*.
39. Claimant then filed her claim in Vermont. Defendant does not contest Vermont’s jurisdiction.

#### **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, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941), 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, supra* at 19; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

*The Cause of Claimant's Right Knee Pain on January 3, 2020*

2. Where the causal connection between employment and injury is obscure, and a layperson could have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393, 395-96 (1979).
3. The parties presented conflicting expert medical opinions concerning the cause of Claimant's right knee pain on January 3, 2020. 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. Here, both medical experts are well-qualified orthopedic surgeons, and neither was a treating physician. Although Dr. Spina physically examined Claimant, Dr. Kirkpatrick performed a more comprehensive review, including Mr. Preston's highly relevant preservation deposition. Sometimes the records tell the story better than a physical examination, and this is one of those rare occasions because the detailed records review here focused on prior medical history that was crucial to the causal analysis. *See Rivers v. University of Vermont*, Opinion No. 05-09WC (February 10, 2009) (medical records review more compelling than treating physician's causation opinion that relied too heavily on claimant's unsupported account).
5. Finally, Dr. Spina's opinion was based on inaccurate information that he received from Claimant. Dr. Kirkpatrick, by contrast, formulated his opinion with an understanding of Claimant's pre-existing knee pathology. Further, his opinion accounts for the significant chronic damage found in her lateral compartment during surgery. Thus, Dr. Kirkpatrick's opinions are clear, thorough, and objectively supported in a way that Dr. Spina's are not.
6. I therefore conclude that Claimant had a pre-existing bucket handle tear of her meniscus that periodically slipped out of place. On January 3, 2020, the torn meniscus again slipped out of place, this time failing to return to its proper position. As Dr. Kirkpatrick persuasively explained, Claimant's work conditions and activities on that day did not cause the meniscus to slip out of place, nor did they cause its failure to return to its proper place. Instead, it was mere happenstance that the meniscus slipped and failed to return to place at work on January 3, 2020.

Arising out of and in the Course of Employment

7. To establish a compensable claim under Vermont's workers' compensation law, a claimant must show both that the accident giving rise to his or her injury occurred "in the course of the employment" and that it "arose out of the employment." *Miller v. International Business Machines Corp.*, 161 Vt. 213, 214 (1993); 21 V.S.A. § 618.
8. An injury occurs in the course of employment "when it occurs within the period of time when the employee was on duty at a place where the employee may reasonably be expected to be while fulfilling the duties of [the] employment contract." *Miller, supra* at 215, quoting *Marsigli Estate v. Granite City Auto Sales, Inc.*, 124 Vt. 95, 98 (1964). An injury arises out of the employment "if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where [claimant] was injured." *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 599 (1993), quoting 1 A. Larson, *Workmen's Compensation Law* § 6.50 (1990) (emphasis in original). This so-called "positional risk" analysis places responsibility on the employer when the employee's injury would not have occurred "but for" the employment and the employee's position at work. *Shaw, supra*, at 599; *J.C. v. Experian Information Solutions*, Opinion No. 23-08WC (June 5, 2008).
9. There is no dispute in the current claim that Claimant's right knee pain occurred in the course of her employment. The dispute here concerns whether her right knee condition arose out of her employment on January 3, 2020. Ordinarily, if an injury occurs in the course of employment, it also arises out of the employment, "unless the circumstances are so attenuated from the condition of employment that the cause of the injury cannot reasonably be related to the employment." *Shaw, supra*, at 598. Thus, the "arising out of employment" component is not met if the injury arises out of a purely personal risk, unless the employment contributes to the risk. When the employee has a pre-existing physical condition, this employment contribution may be found if the employment places the employee in a position that aggravates the idiopathic condition, or if the employment precipitates the effects of the condition by strain or trauma. *Marcy v. Georgia Pacific*, Opinion No. 27-98WC (June 1, 1998), citing 1 A. Larson, *Workers' Compensation Law* § 12.00.
10. Based on Dr. Kirkpatrick's persuasive opinion, the slippage of Claimant's pre-existing bucket handle tear in such a way that it failed to return to position on January 3, 2020 was just another manifestation of her purely personal knee condition. Conclusion of Law No. 6 *supra*. Sitting at work with her legs crossed did not make her condition worse, not did it cause any strain or trauma that precipitated the onset of knee pain. Although the surface of her workstation was cluttered, the workstation was not cramped. Claimant herself reported to the Emergency Department that she suffered no trauma to her knee and that it just slipped out of place "spontaneously." *JME at 001*. Thus, nothing in Claimant's work environment caused or contributed to her right knee condition on January 3, 2020.
11. Despite Vermont's adherence to the positional risk doctrine, the circumstances of the injury still must not be "so attenuated from the condition of employment that the cause of the injury cannot reasonably be related to the employment." *Meunier v. The Lodge at Shelburne Bay Real Estate, LLC*, Opinion No. 11-16WC (July 27, 2016), quoting *Shaw*,

*supra*, at 599. Although Claimant’s bucket handle tear slipped out of place in the course of her employment, neither the tear itself, nor the displacement, had any causal connection with her employment. I therefore conclude that Claimant’s right knee condition on January 3, 2020 did not arise out of her employment. *See Shaw, supra*, at 599.

12. Claimant has failed to meet her burden of proof on the “arising out of employment” component of the compensability test. She has therefore failed to establish a compensable claim under Vermont’s workers’ compensation statute.

**ORDER:**

Based on the foregoing findings of fact and conclusions of law, Claimant’s claim for workers’ compensation benefits referable to her right knee condition is **DENIED**.

DATED at Montpelier, Vermont this 1<sup>st</sup> day of July 2021.

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Michael A. Harrington  
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.