MICHAEL TEDESCO, Employee,
v.
BAYHEALTH MEDICAL CENTER,
Employer.

INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

Hearing No. 1332545

Mailed Date: August 26, 2014
August 25, 2014

DECISION ON PETITION TO DETERMINE ADDITIONAL COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board August 11, 2014, in the Hearing Room of the Board, Milford, Delaware.

PRESENT:

MARY DANTZLER

PATRICIA MAULL

Heather Williams, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Christopher Amalfitano, Attorney for the Employee

Keri Morris-Johnston, Attorney for the Employer

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NATURE AND STAGE OF THE PROCEEDINGS

Michael Tedesco ("Claimant"), was injured in a work accident on January 19, 2009, while he was employed at Bayhealth Medical Center ("Employer"). Claimant sustained injuries to his left knee and left hip. On January 8, 2014, Claimant filed a Petition to Determine Additional Compensation Due seeking compensability/entitlement to ongoing medical care, including surgery to his left knee. Employer denies that Claimant's current left knee symptoms are causally related to the January 2009 work injury.

A hearing was held on Claimant's petition on August 11, 2014. This is the decision on the merits of the petition.

SUMMARY OF THE EVIDENCE

On January 19, 2009, Claimant was employed by Employer as a surgical nurse when he was preparing for surgery and slipped and twisted his left knee. Claimant testified that he did not fall during this incident, and, in fact, completed his duties for the day. After the incident, Claimant reported it to his supervisor and Employer's Employee Health Center. Employer's Health Center referred Claimant to Dr. Rowe, who prescribed him a knee brace on the first visit. Claimant testified that he continues to wear the brace to this day and he showed the brace on his knee as he testified.

Initially, Dr. Rowe prescribed Claimant physical therapy and then did a cortisone injection under his knee cap, but that did not improve his condition. Dr. Rowe then ordered an MRI of Claimant's knee to determine what further treatment was needed. Claimant had an MRI in April 2009 and he believes Dr. Rowe told him there was a meniscal tear at the time of that MRI. Claimant reported additional complaints about his hip to Dr. Rowe too, but Dr. Rowe

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believed that those were related to his walking with a limp and recommended chiropractic care. He continued with chiropractic care for some time thereafter.

When Claimant saw Dr. Rowe originally, Dr. Rowe did discuss arthroscopic surgery with him and Claimant understood the reason Dr. Rowe was not recommending surgery at that time was because it was not warranted at that point.

Claimant stated that there are times when his knee will give out or lock, so he continues to wear the knee brace. Around May or June of 2013, Claimant again began seeking a provider who would see him for follow up care for his knee. Claimant claims to have had ongoing problems with the left knee, but alleges he did not seek treatment due to lack of insurance after Employer administratively dismissed him in 2011. Claimant alleges that he did not realize he had the right to be re-evaluated for the injury. Claimant reported that initially he tried to see other doctors, but no one else would see him because he didn't have any secondary insurance and Dr. Rowe had sold his practice to the hospital by then.

In February 2010, Claimant had an intervening slip and fall event, where he injured the left side of his body, including his hip. During this fall, Claimant also injured his wrist and elbow and has had numerous surgeries to treat those injuries. After this fall, in April 2010, Claimant saw Dr. Mattern, and the notes from that visit indicate Claimant reported that "his left hip is getting better and he does not feel it needs treatment at this point."

In October 2010, Claimant was involved in a motor vehicle accident where the other vehicle hit the driver's side of Claimant's vehicle while he was driving. As a result of the motor vehicle accident, Claimant sustained neck, back and right wrist injuries. In September 2013,

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Claimant had a third intervening incident where he slipped and fell at an amusement park theater on his left side and injured his left elbow.

Claimant reported that there is never a time when he does not have either knee or hip pain. He does not believe his complaints have ever changed since the initial injury. Claimant complained that he had deep pain on the inside of his knee going into the back of his knee. He is aware that Dr. Rowe diagnosed patella knee syndrome, but he believes Dr. Rowe was eliminating that from the possible problems.

On cross examination, Claimant reported he does not believe he received any treatment from Employee Health initially after the injury, but they may have sent him to physical therapy before or after he saw Dr. Rowe. Following the injury, Claimant reported to Employee Health on January 22, 2009 and January 29, 2009. Records from those visits reveal that Claimant reported that the lateral aspects of knee had resolved by 80%, but Claimant testified he did not remember telling them that at the time.

September 10, 2009 was the last time Claimant sought treatment with Dr. Rowe for his left knee and/or hip. Dr. Rowe's treatment included: medication (Celebrex and Soma), injections, chiropractic care and physical therapy. When Claimant saw Dr. Rowe immediately after the injury, Dr. Rowe did not believe that taking the entire meniscus would be "worth taking on" at that time.

Claimant reported that he did not seek treatment again for his left knee from 2009 until 2013 because Dr. Rowe said there was nothing they could do with it and he had insurance issues. Claimant stated he was unaware that worker's compensation insurance could cover the claim if he did not have other health insurance coverage.

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In November 2013, Claimant saw Dr. Pilkington, who ordered another MRI. The findings of that MRI were that the meniscus was totally torn into two pieces and required surgery. Claimant then saw Dr. DuShuttle.

Claimant's primary care physician is now Dr. Lewandowski and he started seeing him in approximately June 2011, when he was still covered under Blue Cross through Employer. Claimant believes he saw Dr. Lewandowski in 2011 because he needed a physical for surgery, but did not mention his knee or hip issues because he was not there for that. He did tell Dr. Lewandowski about a prior shoulder injury, but that was probably related to a prior surgery.

Claimant now has Medicaid, which began in February of 2014.

Claimant alleges that his knee symptoms are exacerbated by physical activity and his daily activities now are limited to taking care of an infant and running minor errands. He has been out of work for quite some time.

Dr. Richard DuShuttle, a board certified orthopaedic surgeon, testified by deposition on behalf of Claimant. Claimant first saw Dr. DuShuttle on February 26, 2014 and Claimant's primary complaints at that time involved his left knee being locked in the flex position and gait problems that caused hip and knee pain. Dr. DuShuttle saw Claimant a total of four times, in 2014, including the initial visit on February 26, 2014. Dr. DuShuttle reviewed Dr. Rowe's and Dr. Leitman's records from their evaluations performed close in time to the initial 2009 injury and indicated that he disagreed with both doctors' decisions not to do surgery. Dr. DuShuttle testified that he would have recommended a meniscectomy in 2009 if he had seen Claimant at that time. Dr. DuShuttle testified that he believed Claimant's limping from knee pain causes his increased hip pain.

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On cross examination, Dr. DuShuttle testified he believed the reason Claimant had not sought treatment for the left knee symptoms from September 2009 until February 2014 (when he saw Dr. DuShuttle) was because Claimant wanted to continue working; however, Dr. DuShuttle admitted that he was unaware that Claimant had not worked since August 2011. Dr. DuShuttle agrees that Dr. Rowe's 2009 diagnosis, of left knee patellofemoral syndrome, immediately following the work injury, may have been accurate. He also agreed that the course of treatment for that diagnosis is medication, injections and therapy and he explained that about 70% of patients with that diagnosis get better.

Dr. Elliot Leitman, a board certified orthopaedic surgeon, testified by deposition on behalf of Employer. Dr. Leitman had evaluated Claimant twice, once on July 27, 2009(immediately after the work injury) and then again on February 7, 2014. He had reviewed Claimant's medical records from the 2009 injury, including diagnostic tests from Kent General Hospital, physical therapy notes and notes from Dr. Rowe and Employee Health Center. In conjunction with his examinations, he reviewed additional medical records specifically relating to the knee, which included Dr. Manifold's records, Dr. Bandera's records, his own previous DME reports and American Therapy & Rehab records. Dr. Leitman reported that his review of the records indicated that Claimant had slipped and twisted his left knee in the operating room on January 19, 2009. Claimant had been seen by Employee Health but had continued to work throughout that time. The records stated that Claimant had pain in the superolateral aspect of his left knee and had developed some pain at the lateral aspect of his hip. According to those records, Dr. Rowe referred Claimant to chiropractic care and Claimant had not been doing any stretching for his lower extremity.

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In the records that Dr. Leitman reviewed, Employee Health reported that Claimant was seen at the facility on January 22, 2009 and reported he had slipped in the operating room four days earlier, had pain in the lateral aspect, but it had resolved by 80% with no numbness. At that visit, Claimant also reported mild weakness when climbing. The assessment from that visit was lateral collateral ligament strain, which refers to the ligaments on the outside of the knee. Dr. Leitman's review of Claimant's records revealed that when Claimant saw Dr. Rowe in January 2009, he reported that he had twisted his left knee on wet floor, but had not fallen, which was consistent to his report to Employee Health.

When Claimant saw Dr. Leitman on July 27, 2009, he reported primarily superolateral pain, which is pain towards the front of the knee, but

also on the outside of the knee. Dr. Leitman's findings at this examination were: a slightly antalgic gait (slight limp); non tender over the rear trochanter (lateral aspect of the hip); tightness of his IT band and quads; no knee swelling; full range of motion; no apprehension; and no ligamentous instability. Dr. Leitman's impression was that Claimant had a knee sprain with some patellofemoral pain and also some secondary trochanteric bursitis to the left hip. Dr. Lehman's testimony was that Claimant had a left knee sprain with pain primarily in the front and lateral aspect of the knee.

On April 2, 2009, Claimant had an MRI of the left knee and Dr. Leitman reviewed the findings of that report. Dr. Leitman reported that the finding was that there was "linear meniscal degeneration or nondisplaced horizontal tear of the posterior medial meniscus." Dr. Leitman explained that meant the meniscus looks like a triangle or wedge when viewed at a cross section and the MRI detects fluid within soft tissue of the meniscus. Claimant had a horizontal tear, which is parallel to the floor and is called an intrasubstance tear, which can be a normal degenerative finding. Dr. Leitman explained that regardless of its origin, because of its location,

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it does not warrant surgery. Dr. Leitman testified that on April 8, 2009, Claimant had an x-ray of the left hip, which indicated Claimant had mild degenerative disease in that hip.

In February 2014, Dr. Leitman examined Claimant again. During this examination, Dr. Leitman found Claimant had no effusion in his left knee; was tender along the posteromedial joint line; and had pain when doing a twisting maneuver meant to provoke meniscal pain. During this examination, Claimant reported an unrelated slip and fall on September 29, 2013, which resulted in shoulder pain. Claimant mentioned his 2009 fall and left knee injury and indicated it was worse. At that time, Claimant was seeing Dr. Pilkington for his symptoms, which included posterior medial locking and pain.

When comparing his evaluations of Claimant in 2009 and 2014, Dr. Leitman indicated his findings were different in that the issues were on opposite sides of the knee during the two different examinations. In 2009, it was on the lateral aspect, which is away from the midline of the body, and in 2014, it was on the medial aspect, which is towards the midline. Dr. Leitman explained that when Claimant originally presented in 2009, he reported having pain in the lateral and anterior areas, but the MRI findings in 2009 did not show findings in that area, so he and Dr. Lowe agreed that surgery was not warranted because the pain he was explaining did not match the location of any tear.

Dr. Leitman did not agree that there was any definitive evidence of a tear in the 2009 MRI findings, but there was only a "signal" in 2009, which could be intrasubstance degeneration or a tear. Regardless of which finding it was, Dr. Leitman indicated that person would be predisposed to tearing later in life.

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Dr. Leitman's review of Dr. Rowe's records revealed that on January 29, 2009, Dr. Rowe diagnosed Claimant with left knee patellofemoral syndrome, which is pain in the front of the knee. On February 12, 2009, Dr. Rowe's records revealed the same diagnosis, and Claimant reported that he was 80% improved overall. In Dr. Rowe's April 8, 2009 notes, Dr. Leitman observed that Dr. Rowe diagnosed Claimant with nondisplaced horizontal tear posterior medial meniscus per MRI and left hip sprain.

Dr. Leitman's opinion, from reviewing the actual MRI report, was that the MRI showed "intrasubstance signal" which would have been either degeneration or a tear. On May 21, 2009, when Claimant saw Dr. Rowe again, Dr. Leitman reported that Claimant indicated an 80% improvement overall. At that time, Dr. Rowe recommended pain medication, home exercises and chiropractic treatment for Claimant. On July 7, 2009, when Claimant saw Dr. Rowe, he reported 90% improvement in his knee. In

September 2009, when Claimant saw Dr. Rowe for the last time, Dr. Rowe explained to Claimant that doing arthroscopic surgery on the knee would make the degenerative changes in the knee worse and could irritate the area. Dr. Leitman testified that he agreed with Dr. Rowe's assessment at the time that the alleged "clicking" Claimant was having in the knee at that time was coming from under the kneecap and nowhere else.

Dr. Leitman also reviewed Claimant's visit records from Dr. DuShuttle from February 2014. At that visit, Dr. DuShuttle diagnosed Claimant with "tear medial meniscus knee" and recommended surgery. On Claimant's next visit with Dr. DuShuttle, in April 2014, Claimant complained of hip pain associated with a February 2010 slip and fall. Dr. Leitman noted that Claimant's June 2014 visit with Dr. DuShuttle focuses on his hip issues as well and the notes

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portion mentions surgery, but does not indicate which type of surgery the doctor was recommending.

After reviewing all of Claimant's medical records and conducting his own evaluations, Dr. Leitman's diagnosis of Claimant as it relates to the January 19, 2009 work event was that Claimant suffered a patellofemoral contusion, or bruise, to the anterior kneecap and the structures below the kneecap, and also a sprain to the lateral collateral ligament. From the end of 2009 to the end of 2013, Claimant never sought medical treatment for the left knee injury. Dr. Leitman concluded that Claimant's current need for left knee surgery, was not related to the January 2009 work event because Claimant's complaints immediately following the injury were all in the anterior and lateral compartments of the knee and were not pertaining to the meniscus. Claimant's more recent complaints were medial pain, on the opposite side of the knee, than his original complaints, immediately following the 2009 work incident. Dr. Leitman saw Claimant a few months after the work incident in 2009 and predicted an excellent prognosis.

On cross examination, Dr. Leitman confirmed his opinion that arthroscopic surgery on Claimant's left knee would not reduce Claimant's left hip pain. In fact, Dr. Leitman testified that was an anatomical impossibility. Dr. Leitman further explained that if Dr. Rowe suspected a "meniscal tear" and believed it to be symptomatic, he would have treated it with surgery, but instead he chose to treat Claimant for the patellofemoral pain, instead of the meniscal pain, which is indicative of his belief that Claimant did not have an actual meniscal tear at the time. Dr. Leitman noted that there is no real way to determine whether or not an actual meniscal tear exists, short of exploratory surgery.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

MEDICAL TREATMENT

In this case, the primary issue is whether the medical treatment (surgery) required to treat the left knee symptomology is causally related to the 2009 left knee work injury. When an employee has suffered a compensable injury, the employer is required to pay for reasonable and necessary medical "services, medicine and supplies" causally connected with that injury. DEL. CODE ANN. Tit. 19, § 2322. "Whether medical services are necessary and reasonable or whether the expenses are incurred to treat a condition causally related to an industrial accident are purely factual issues within the purview of the Board." *Bullock v. K-Mart Corporation,* Del. Super., C.A. No. 94-A-02-002, 1995 WL 339025 at *3 (May 5, 1995). In this case, the sole issue is whether Claimant's current need for left knee surgery is causally related to the original 2009 work injury.

"The demeanor and credibility of witnesses and the weight to be accorded to their testimony is for the Board to determine..." *General Motors Corp. v. Cresto,* 265 A. 2d 42, 43 (Del. Super.

1970). "Even uncontradicted evidence need not necessarily be accepted as true, where there is evidence or circumstances from which a contrary inference may be drawn." *Whaley v. Shellady, Inc.,* 161 A.2d 422, 424 (Del. 1960). As triers of fact, the Board may accept a witness' testimony and evaluate the witness' credibility, without need for further clarification. *DiSabatino Bros. v. Wortman,* 453 A.2d 102 (Del. 1982). "The credibility of the witnesses, the weight of their testimony, and the reasonable inferences to be drawn therefrom are for the Board to determine." *Coleman v. Department of Labor,* 288 A.2d 285, 287 (Del. Super. 1972).

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The Board agrees with Dr. Leitman that Claimant's current need for left knee surgery is not causally related to the original work injury. First, the Board considers Dr. Leitman's testimony regarding the existence or lack thereof of a tear of the meniscus on the original MRI immediately following the original 2009 work injury. Dr. Leitman's testimony was that there was either a degenerative condition or a tear, but there was no way of knowing and Dr. Rowe's treatment was indicative of his belief that it was a degenerative condition. In fact, Claimant's own testimony was that Dr. Rowe was concerned that surgery would worsen the degenerative changes in the knee and irritate the area. Dr. Leitman's review of his own records, as well as Dr. Rowe's records, confirms that the course of treatment Dr. Rowe followed was indicative of that prescribed for a degenerative condition instead of that prescribed for a meniscal tear.

Second, the Board considers the fact that both Dr. Rowe and Dr. Leitman, who treated Claimant close in time to the original injury, determined that Claimant's meniscus did not warrant surgery and that the proper course of treatment was injections, medication and therapy. Dr. Leitman evaluated Claimant both close in time to the injury (in 2009) as well as recently, when Claimant has sought treatment again. Dr. Leitman testified that Claimant's complaints immediately following the 2009 work injury were about the lateral aspect of the knee, which is not where the 2009 MRI showed any area of concern, and is evidence of why Dr. Rowe chose to treat Claimant non-surgically. When Dr. Leitman examined Claimant again in 2014, Claimant's complaints were in a different location and were about the medial aspect of the knee. Based on Claimant's own complaints, medical records and evaluations, Dr. Leitman determined that the current condition requiring surgery is not causally related to the original work injury.

Finally, the Board considers Claimant's own testimony and the records indicating that Claimant went without any treatment for his left knee for a period of nearly four years after he

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stopped treating with Dr. Rowe. Less than two weeks after the injury occurred, Claimant reported he had an 80% improvement in his knee. By July 2009, when Claimant saw Dr. Leitman for the first time, he was reporting a 90% improvement in his knee overall. Even Dr. DuShuttle, Claimant's own expert, agreed that the proper course of treatment for Claimant's diagnosis of patellofemoral syndrome is medication, injections and therapy, and he reported that approximately 70% of patients with that diagnosis and treatment get better. In addition, there were at least three intervening events, in February 2010, October 2010 and September 2013; two of which involved injuries to the left side of Claimant's body. It was not until after the third and final intervening event, that Claimant sought treatment again for the left knee - more than four years after the original work injury. As mentioned earlier, the symptomatology after these intervening events was on a different side of the knee (medial rather than lateral) than Claimant had after the work accident. This is suggestive that Claimant's current knee problems are related to one or more of those intervening events rather than to the work injury. There is, of course, no requirement for either Employer or the Board to identify a non-work cause of an injury. *See Strawbridge & Clothier v. Campbell,* 492 A.2d 853, 854 (Del. 1985); *Alfree v. Johnson*

Controls, Inc., Del. Super., C.A. No. 97A-04-005, Goldstein, J., 1997 WL 718669 at *7 (September 12, 1997). The burden of proof in this case rests with Claimant to show by a preponderance of the evidence (more likely than not) that his current left knee problem is causally related to his 2009 work accident. However, in this case, there is evidence of other possible explanations for Claimant's current knee condition independent of the 2009 work event.

Accordingly, the Board finds that Claimant has not met his burden of proving by a preponderance of the evidence that the surgery he now needs is causally related to the original 2009 work injury. The evidence showed: there was no clear evidence of the existence of a

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meniscal tear at the time of the original injury; Claimant's diagnosis was patellofemoral syndrome and his course of treatment was not the same as it would have been had it been an actual meniscal tear; Claimant experienced an 80% improvement within a few weeks of the injury; Claimant's 2009 complaints and his 2014 complaints were about different areas of the knee; and, there were at least three intervening events where Claimant was injured during the four years that Claimant did not pursue any treatment for his knee. Based on all of the evidence above, it is not more likely than not that Claimant's current need for medical treatment is causally related to the 2009 work injury.

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STATEMENT OF THE DETERMINATION

For the reasons set forth above, the Board finds that Claimant has not met his burden of proof in establishing, more likely than not, that his current need for left knee surgery is causally related to the 2009 work injury.

IT IS SO ORDERED THIS 25th DAY OF AUGUST, 2014.

INDUSTRIAL ACCIDENT BOARD

\s\Mary Dantzler
MARY DANTZLER

\s\Patricia Maull
PATRICIA MAULL

I, Heather Williams, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

/s/
HEATHER WILLIAMS

Mailed Date: 8-26-14

/s/
OWC Staff