

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

VIRIDIANA RAMOS-REYES)	
Claimant)	
V.)	
)	
TYSON FRESH MEATS, INC.)	CS-00-0118-724
Self-Insured Respondent)	AP-00-0453-194

ORDER

Claimant appealed the September 20, 2020, Award issued by Administrative Law Judge (ALJ) Pamela J. Fuller. The Board heard oral argument on January 14, 2021.

APPEARANCES

Stanley R. Ausemus appeared for Claimant. Gregory D. Worth appeared for self-insured Respondent.

RECORD AND STIPULATIONS

The Board considered the record and adopted the stipulations listed in the Award. The Board also considered the Court-ordered Independent Medical Evaluation report dated March 14, 2019, of Dan M. Gurba, M.D., and the documents of record filed with the Division.

ISSUES

1. What is the nature and extent of Claimant's permanent functional impairment?
2. Is Claimant entitled to future medical?

FINDINGS OF FACT

The ALJ found Claimant suffered two percent permanent partial disability impairment to the left leg, an injury to the left knee arising out of and in the course of her employment. The ALJ relied on the opinions of Dr. Lucas, the treating physician and Dr. Gurba, the Court-ordered IME physician. The right to future medical benefits was granted.

Claimant worked for Respondent pulling meat off the line and putting it in a cart. On April 5, 2017, Claimant was picking up meat and placing it on a tray next to her, twisting

to the left, including her left knee. Claimant's left knee popped and she felt immediate pain. She reported this incident to her supervisor and received treatment. Due to Claimant favoring her left knee, she eventually developed pain in her right knee. Claimant reported the right knee pain to Respondent and was told she would not be receiving treatment for the right knee because it was not part of the injury to the left leg.

Claimant continues to have pain in both knees. She rated her left knee pain at a seven out of ten on the pain scale, with ten being the worst pain. She rated her right knee pain at a five. Claimant described the left knee pain as constant and located underneath her kneecap. Claimant's right knee pain is intermittent. She has trouble with activities such as squatting to the point her knees lock up and she gets shooting pain in her knees. Claimant cannot walk long distances. Standing is also a problem with shooting pain from the left knee to the hip and back down to her heel and with numbness in the right knee. Claimant can no longer run or carry anything heavy and has problems going up and down stairs. Claimant denied any knee problems prior to April 2017. Claimant takes Tylenol for pain and discomfort twice a day.

Dr. Brennan Lucas first examined Claimant on November 6, 2017. Claimant reported complaints of constant throbbing and burning left knee pain. She rated her pain as an eight out of ten on the pain scale. Claimant reported this pain disrupted her sleep three nights a week. She also experienced weakness, loss of motion and tingling in her left knee. Her symptoms were aggravated by walking, sports, stairs, squatting, and sitting with knees bent. Rest and ice relieve these symptoms. Claimant was given an injection providing relief for three to four hours. Dr. Lucas also examined Claimant's right knee, due to some pain along the joint line on the inside of the knee. He believed the pain was common if someone has early arthritis. Claimant was using crutches which he recommended she stop using immediately.

Claimant's left medial knee pain failed to improve since her injury. She denied relief after three months of physical therapy and oral anti-inflammatories. Two injections gave only three to four hours of relief. Claimant wore a brace for a few weeks, but it increased her pain. Dr. Lucas was concerned there might be a meniscus tear.

An MRI was completed on November 30, 2017, showing mild edema involving the medial collateral ligament suggesting a mild sprain. Dr. Lucas diagnosed left knee pain. Due to the longevity of Claimant's symptoms and unsuccessful conservative treatment he recommended diagnostic arthroscopic surgery of the left knee.

Claimant's arthroscopy took place on January 23, 2018. The findings were an inflamed plica band. The plica band was trimmed. Dr. Lucas noted Claimant's meniscus was completely normal and there were no signs of arthritis.

On May 30, 2018, Claimant was back for her four month recheck after left knee arthroscopic plica excision. Claimant's range of motion and swelling were well managed. Claimant reported increased pain with standing for longer than one hour. She rated her pain at a five out of ten on the pain scale. Overall, Claimant's knee felt good. However, Claimant also reported a catching sensation in her left knee. This sensation could not be reproduced. Dr. Lucas testified Claimant was slow to recover because she had been on crutches for quite a while before surgery and she had lost quite a bit of muscle mass and strength. Claimant's symptoms were discussed and Claimant was told that they would improve over time with home exercise and consideration of a new position with Respondent. There was nothing more that could be done from a surgical standpoint. Claimant was released at maximum medical improvement and full duty.

On July 15, 2018, Dr. Lucas rated Claimant's permanent impairment at two percent to the left lower extremity. The rating was based on the *American Medical Association Guides to the Evaluation of Permanent Impairment, 6th Edition*, referencing table 16-3, page 509, Class I grade C for plica excision.¹ On September 12, 2018, Dr. Lucas provided an impairment rating of one percent to the left lower extremity for arthroscopic plica excision based on *The Guides, 4th Edition*. Dr. Lucas utilized the rating guide for a partial meniscectomy, which he found comparable to a soft tissue debridement or plica excision.

Dr. Lucas did not recommend future medical treatment for Claimant.

Dr. Pedro A. Murati examined Claimant on October 29, 2018, at her attorney's request. Claimant complained of pain in both knees with the left more constant than the right; constant pain in the right heel that is worse with activity; pain in the waist/hips, especially on the right; and pain in both legs worse on the left. She reported the hip complaints began about two months after the accident when she was using crutches.

Dr. Murati examined Claimant's lower extremities and hips and diagnosed post apparent left knee arthroscopic plica excision with Dr. Lucas; bilateral patellofemoral syndrome; flexion contracture of the left knee; and right trochanteric bursitis secondary to antalgic gait. He opined Claimant's hip issues were due to overuse in compensation for her left knee injury. Dr. Murati opined the prevailing factor in the development of Claimant's complaints was the work accident. He recommended cortisone injections for the patellofemoral syndrome. If the cortisone injections do not work, then synvisc injections should be tried. He recommended a knee brace pulling medially or McConnell taping. He also recommended anti-inflammatory and pain medication as needed. For the flexion contracture of the left knee, he recommend physical therapy and an MRI. For the

¹ There are two editions of the *American Medical Association Guides to the Evaluation of Permanent Impairment*; the 4th Edition and the 6th Edition. Both will be referred to as *The Guides*, with the designation of which edition is being referenced.

trochanteric bursitis, Dr. Murati recommended cortisone injections, physical therapy with possible instruction on the use of an SI belt or gait training and anti-inflammatory and pain medication as needed.

Dr. Murati examined Claimant again on July 10, 2019, noting complaints of worsened pain in both knees with the left more constant than the right; constant pain in the right heel that is worse with activity; and pain in both legs worse on the left. He diagnosed post apparent left knee arthroscopic plica excision with Dr. Lucas; bilateral patellofemoral syndrome, right from overuse; and right trochanteric bursitis secondary to antalgic gait. He opined the left patellofemoral syndrome most likely happened at the time of the accident and continually got worse. He felt Claimant's favoring the left leg caused the right to be used more and from altered gait. He explained one can get patellofemoral syndrome in two ways: sudden direct trauma; and more commonly, the general degenerative process of the body as we get older.

Dr. Murati assigned the following impairment based on *The Guides 6th Edition*: for the left patellofemoral syndrome at three percent to the left lower extremity impairment based on Table 16-3, Class I, which converts to a one percent to the body as a whole. The right patellofemoral syndrome was rated at three percent right lower extremity using Table 16-3, Class I, and the right trochanteric bursitis was rated at seven percent right lower extremity, using Table 16-4, Class I. He combined these lower extremity impairments for a ten percent to the right lower extremity, which converts to a four percent body as a whole impairment. Claimant's total permanent impairment is five percent body as a whole.

Dr. Murati also rated Claimant according to *The Guides 4th Edition*. He assigned two percent impairment to the left lower extremity for the post status plica excision and five percent for the patellofemoral syndrome to the left lower extremity based on Table 62. He assigned thirteen percent impairment for atrophy of the left thigh using Table 37. These impairments combine to nineteen impairment to the left lower extremity, which converts to eight percent impairment to the body as a whole. The doctor assigned five percent to the right lower extremity for right patellofemoral syndrome using Table 62. He assigned seven percent to the right lower extremity for the right trochanteric bursitis based on Table 64. These ratings to the right lower extremity combine to twelve percent, which converts to five percent body as a whole. The total impairment is thirteen percent to the body as a whole.

Dr. Murati assigned permanent restrictions of: no climbing ladders, squatting, crawling, and kneeling; no repetitive foot controls with the right or left; no lifting, carrying, pushing or pulling more than 35 pounds, occasionally 35 pounds and frequently 20 pounds; no lifting below knuckle height; occasionally stand and walk; and rarely climb stairs; and alternate sitting, standing and walking.

Dr. Murati opined Claimant will need further medical treatment with at least yearly follow ups on the knees and right hip. This treatment could include, but not be limited to

appropriate physical therapy, injections, radiological studies, anti-inflammatory and pain medication and possible surgical intervention.

Dr. Murati opined although the plica was removed, which left Claimant with a two percent impairment, he also acknowledged there are other abnormalities and he rated those as well. Patellofemoral syndrome is degenerative and in Claimant's case is caused by sudden trauma and overuse. He did admit the patellofemoral syndrome he attributed to the accident could just have easily been preexisting, but not probable due to Claimant's age of 25. He opined the flexion contracture caused Claimant's altered gait. When everything else resolved, Claimant was still left with a worsened patellofemoral syndrome. He had no opinion on Claimant's heel complaints. He did examine both legs and found nothing in regard to either heel.

Dr. Lucas testified although Dr. Murati may have found tenderness of the right trochanteric bursa in his examination of Claimant, there were no hip complaints, when he himself, evaluated Claimant. He could not comment on the patellar compression Dr. Murati noted in his report except to say there was completely normal cartilage on both the aspects of the patellar and completely normal cartilage on the femoral trochanter. He denied Claimant had patellar apprehension as Dr. Murati indicates. He testified Claimant would not have developed patellar instability following a plica incision.

Dr. Dan Gurba examined Claimant on March 14, 2019, at the Court's request for her left and right knee pain. Dr. Gurba noted Claimant received treatment for her injury and was able to return to full duty. Dr. Gurba found Claimant had slightly diminished range of motion in both extension and flexion of the left knee compared to the right. He also found persistent diffuse swelling in the left knee with persistent inflammation seeming to be aggravated by Claimant's daily work activities.

Dr. Gurba did not feel physical therapy or surgical intervention were needed, but felt an intra-articular cortisone injection in the left knee was reasonable. Dr. Gurba opined the work accident was the prevailing factor causing the persistent pain and swelling in the left knee. He felt the pop in Claimant's knee initiated her symptoms. He believed a medial plica was involved in Claimant's popping sensation or possibly a patellar subluxation. He found the right knee pain is likely due to compensation for the left knee symptoms. He agreed with Dr. Lucas, Claimant's operating surgeon, a permanent impairment of one percent to the left lower extremity was appropriate. He could not justify any impairment to the right lower extremity.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2016 Supp. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

Claimant argues Dr. Murati's 4th Edition rating of thirteen percent to the body as a whole should be adopted. Claimant requests the right to review and modification be granted.

Respondent argues the Award should be affirmed for the two percent to the left leg, and reversed in regard to future medical, as neither Claimant's treating physician, Dr. Lucas, or Court-ordered IME physician, Dr. Gurba, felt Claimant was in need of future medical treatment.

In analyzing the nature and extent of Claimant's impairment, it first must be determined if Claimant's permanent impairment is a scheduled injury limited to the left knee or is a body as a whole impairment.

Three doctors testified in this matter. Two doctors, Dr. Gurba and Dr. Lucas were orthopedic surgeons who specialize in lower extremity conditions like knees. Dr. Murati does not have a speciality in orthopedic surgery. Dr. Lucas, in assessing Claimant's condition, had the benefit of performing the arthroscopic surgery on Claimant's left knee, enabling him to see the condition of Claimant's left knee. Dr. Murati's opinion of Claimant having hip and knee conditions in addition to the plica excision is not credible. Except for the right and left knee complaints, no other doctor noted any of the complaints Dr. Murati found. Neither Dr. Lucas nor Dr. Gurba found any permanent impairment in the right knee. It is found and concluded Claimant has a scheduled injury and the permanent impairment is limited to the left knee.

K.S.A 2016 Supp. 44-510e(a) states in part:

In case of whole body injury resulting in temporary or permanent partial general disability not covered by the schedule in K.S.A. 44-510d, and amendments thereto, the employee shall receive weekly compensation as determined in this subsection
...

K.S.A. 2016 Supp.44-510d(b) states in part:

If there is an award of permanent disability as a result of the injury there shall be a

presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule:

...

(15) For the loss of a lower leg, 190 weeks.

There were two rating opinions offered for the plica excision using *The Guides 6th Edition*, two percent and three percent. Dr. Gurba gave a one percent impairment rating without specifying which edition of *The Guides* he used. Dr. Lucas' opinion is more credible because he was the treating physician and performed the diagnostic arthroscopic surgery on Claimant's left knee. It is found and concluded Claimant's permanent impairment to the left knee is two percent to the left lower extremity, as opined by Dr. Lucas.

Claimant argues the Supreme Court's recent ruling in *Johnson v. U.S. Food Service* Case No. 117,725, 2021 WL 70145, allows deviation from the 6th Edition of *The Guides* if there is competent medical evidence to do so.

In this case, *The Guides 6th Edition* allows for a higher impairment rating than *The Guides 4th Edition*. According to Dr. Murati, *The Guides 4th Edition*, a plica excision is two percent to the left lower extremity and Dr. Lucas found according to *The Guides 4th Edition* a plica excision receives a one percent rating.

The Board, in this case, finds there is no justification to deviate from *The Guides 6th Edition* in assessing Claimant's permanent impairment. There is insufficient evidence upon which to do so.

K.S.A. 2016 Supp. 44-510h(e) states:

It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include

home exercise programs or over-the-counter medications.

In this case, Claimant is still experiencing left knee pain. Dr. Gurba the Court-ordered physician recommended some injection therapy to cure and relieve the effects of the left knee injury. For these reasons, it is found Claimant is entitled to future medical treatment upon proper application.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of Administrative Law Judge Pamela J. Fuller dated September 20, 2020, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February, 2021.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Stanley R. Ausemus, Attorney for Claimant
Gregory D. Worth, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge