

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**YUSIMI CABEZA** )  
Claimant )  
V. )  
**CARGILL MEAT SOLUTIONS CORP.** ) CS-00-0443-726  
Respondent ) AP-00-0455-853  
AND )  
**OLD REPUBLIC INSURANCE CO.** )  
Insurance Carrier )

**ORDER**

The claimant, through Stanley Ausemus, requested review of Administrative Law Judge (ALJ) Pamela Fuller's preliminary hearing Order dated January 6, 2021. D. Shane Bangerter appeared for the respondent and its insurance carrier (respondent).

**RECORD**

The record consists of the claimant's deposition transcript dated June 1, 2020; Dr. Pratt's deposition transcript dated November 9, 2020, with attached exhibits; the preliminary hearing transcript dated January 5, 2021, with attached exhibits; the case file and the parties' briefs.

**ISSUE**

The sole issue is: did the claimant's knee injuries arise out of and in the course of her employment, including whether her work activities were the prevailing factor causing her injuries and need for medical treatment?

**FINDINGS OF FACT**

The claimant began working for the respondent in 2014. Her initial job involved trimming hanging beef carcasses with a knife. On April 18, 2019, her position changed. Her new job involved cleaning. The claimant testified she cleaned floors with a mop, requiring her to constantly move side-to-side, squat and go up and down ladders. She also used a wheelbarrow to move cow's ears every hour and testified the wheelbarrow "weighed a lot."<sup>1</sup> She denied any prior knee problems.

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<sup>1</sup> P.H. Trans. at 7.

The job description submitted by the respondent shows the physical activities associated with the claimant's cleaning job as constant standing, frequent walking, occasional squatting, stooping, crouching, kneeling and crawling, rarely climb stairs, and no sitting, climbing ladders or walkways and bridges less than 12" wide.

After starting her new job, the claimant began experiencing knee problems. She testified she notified her supervisor on April 29, 2019, but did not request medical treatment. On May 4, 2019, the claimant's left knee locked up. An "Employee Statement of Injury (ESI) Translation" completed through an interpreter the same day, stated: "I was sitting and when I got up I felt something like it balled up in the back of the knee and it started to hurt."<sup>2</sup> The claimant saw the company nurse, who noted limping, crepitus, tenderness and mild swelling to the posterior and anterior knee, with full range of motion. The claimant continued to work, but her symptoms worsened.

The claimant had a left knee MRI on May 9, 2019. She saw R.C. Trotter, M.D., on May 13, 2019, who stated:

Patient has medial and lateral tears of the meniscus. Patient also has a ruptured Baker's cyst. Given the mechanism of injury could presume the rupture of Baker's cyst was cause[d] by the motion of standing from seated position. The meniscal tears do not appear to be consistent with just standing up. These may be an incidental finding.<sup>3</sup>

On June 26, 2019, the claimant underwent an MRI of the right knee. The MRI showed a small undersurface tear of the medial meniscus and trace fluid signal associated with the posterior fibers of the ACL which could be the sequela from a prior injury or a small ganglion cyst.

At the respondent's request, claimant saw David Hufford, M.D., on June 27, 2019, for an independent medical examination (IME). The doctor took a history, performed a physical examination and reviewed the claimant's MRI studies. Dr. Hufford stated:

Ms. Cabeza has not incurred an injury to either knee from her occupational activities. It is unexplained why she should have bilateral meniscal tears which may be degenerative in nature or the result of a non-reported non-occupational injury. The simple act of getting up from a sitting position is not unique to her occupational activities. Her work has not exposed her to an inordinate risk for knee injury. Her work has not caused degenerative joint disease. There is no reason to believe that she incurred a meniscal tear in the left knee by simply getting up from a sitting position even though she was at work when this occurred. There is nothing about her described work activities that should have caused a meniscal tear in the left knee from repetitive activities in the absence of a slip, twist, fall or some other element of torsion that did not occur based on her history that I carefully elicited in

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<sup>2</sup> *Id.*, Trotter Records at 1.

<sup>3</sup> *Id.*, Trotter Records at 2.

regard to this issue. Likewise, there is nothing about her occupational activities nor alteration of gait that has caused a direct injury to the right knee including the meniscal tear that has been documented. The prevailing factor for her current bilateral knee pain is not the occupational activities in which she was engaged.<sup>4</sup>

At her attorney's request, the claimant saw George Fluter, M.D., on December 24, 2019, for an IME. The doctor reviewed medical records, took a history and performed a physical examination. Dr. Fluter assessed bilateral knee pain, bilateral knee internal derangement and right and left medial meniscus tears. The doctor recommended additional medical treatment and stated:

Based upon the available information, more likely than not, there is a causal/contributory relationship between [the claimant's] condition and work-related activities and injury . . . . The prevailing factor for the condition and the need for medical evaluation/treatment is the work-related activities and injury.<sup>5</sup>

On April 17, 2020, the claimant saw Terrence Pratt, M.D., for a court-ordered IME. The claimant complained of continuous tightness, pain and weakness involving the left knee, which locked up with no giveaway. She also had pain in the right knee when standing and a sensation of giveaway or weakness which was not as severe as the left knee. Dr. Pratt reviewed medical records, took a history and performed a physical examination. The doctor diagnosed left knee medial and lateral meniscus tears with probable rupture of the Baker's cyst; and right knee discomfort with findings suggesting a medial meniscus tear and findings that could suggest a pre-existing ACL injury or an intra-articular ganglion. Dr. Pratt stated:

There was no significant evidence of a major twisting or weightbearing injury. Kneeling, squatting or twisting was not reported. She reports developing symptoms 11 days after initiating alternative job tasks and then changing positions from sitting to standing and noting involvement of the left knee. There was no specific injury for the involvement of the right knee. There is no significant evidence that the structural findings on the MRI assessment of the knees relates to her reported vocational related activities with the activities as the prevailing factor for the involvement. It is probable with her reports of symptoms that she had a sprain/strain of the left knee, and subsequently right knee in relationship to her reported activities. It is also probable that she aggravated underlying involvement of the knees. It is also probable that she developed a rupture of a Baker's cyst in early May 2019.<sup>6</sup>

Dr. Pratt stated he could not recommend any medical treatment for the claimant's knees because her work activities were not the prevailing factor for her need for treatment.

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<sup>4</sup> *Id.*, Hufford Report at 2.

<sup>5</sup> *Id.*, Fluter Report at 6.

<sup>6</sup> P.H. Trans., Pratt Report at 5.

At the time of her deposition on June 1, 2020, the claimant was not working and had not worked for the respondent since July 29, 2019. She continued to experience constant pain and discomfort in her knees, left worse than right.

Dr. Pratt testified on November 9, 2020. The doctor testified the claimant's description of events leading to her symptoms at her deposition differed from what she provided to him during the court-ordered IME.

Following a preliminary hearing on January 5, 2021, ALJ Fuller issued an Order the next day. On pages 6 and 7 of the Order, the ALJ stated:

The claimant reported her injury as having occurred when she stood up from a sitting position. She did not report any substantial event occurring that would have caused meniscal tears. She claims her injuries are repetitive in nature yet the job she was performing when she alleges her injuries, she performed for 11 days. The job description provided by the respondent is markedly different from the claimant's description of job activities.

Dr. Fluter was given a history of the claimant performing cleaning activities that required negotiating ladders and stairs multiple times a day. She had to lift a basket full of waste, climb a ladder and then empty the basket contents into a receptacle. She reported she would brace the basket on her knees. He stated that, assuming the accuracy of the history, there are no other obvious causes for the changes present. The prevailing factor for the condition and the need for medical evaluation/treatment is the work related activities and injury.

Dr. Hufford said there was nothing about the claimant's described work activities that should have caused a meniscal tear in the left knee from repetitive activities in the absence of a slip, twist, fall or some other element of torsion that did not occur. There is nothing about her occupational activities nor alteration of gait that caused a direct injury to the right knee including the meniscal tear. The prevailing factor for the claimant's current bilateral knee pain is not the occupational activities in which she was engaged.

Dr. Pratt stated for it to be found the work activities were the prevailing factor for the claimant's injury, the court would need to find there were events where there was major twisting, kneeling in combination with heavy activities. In his report, he stated there was no significant evidence that the structural findings on the MRI of the knees relate to her reported vocational related activities with the activities as the prevailing factor for the involvement. He stated it was probable, with the claimant's reports of symptoms, that she had a sprain/strain of the left knee and subsequently the right knee in relationship to her reported activities. It was also probable that she aggravated underlying involvement of the knees. It is probable she developed a rupture of a Baker's cyst in early May 2019. That if her description as contained in her deposition is accurate, then her torn meniscus could be related to her work activities. Dr. Pratt stated the claimant never described any event of twisting where

she injured her knee. In all the medical he reviewed, there wasn't any indication that she injured her knee in a twisting event. The 11 days she may have rarely gone up stairs was not enough for her to have suffered a repetitive trauma injury to either knee.

Based on all the evidence presented, it is found that the claimant has failed to meet her burden of proof that her meniscal tears are as a result of her work activities. The claimant's request for medical treatment to her knees is hereby denied.

This appeal followed. The claimant argues her work activities were the prevailing factor causing her injuries and need for medical treatment. The respondent maintains the Order should be affirmed.

#### **PRINCIPLES OF LAW**

Under K.S.A. 44-501b and K.S.A. 44-508: (1) an employer is liable to pay compensation to an employee incurring personal injury by accident arising out of and in the course of employment; (2) the claimant has the burden of proof; and (3) the trier of fact shall consider the whole record.

K.S.A. 44-508 states, in part:

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

...

(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard to which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

### **ANALYSIS**

The ALJ's decision is well-reasoned. Additional explanation would be redundant. Simply put, the greater weight of the credible evidence establishes the claimant's job duties were not the prevailing factor in causing her knee conditions, especially based on the medical evidence from Dr. Hufford and the court-ordered physician, Dr. Pratt.

### **CONCLUSION**

The claimant did not prove the prevailing factor requirement. Her asserted injuries did not arise out of and in the course of her employment.

**WHEREFORE**, the Board affirms the January 6, 2021, Order.<sup>7</sup>

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of March, 2021.

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HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

c: (via OSCAR)  
Stanley Ausemus  
D. Shane Bangerter  
Hon. Pamela Fuller

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<sup>7</sup> The above preliminary hearing findings and conclusions are not final nor binding and may be modified upon a full hearing. This review of a preliminary hearing Order was determined by only one Board Member, unlike appeals of final orders, which are considered by the entire Board.