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BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

ALEXANDRIA C. NORRIS,)
)
 Employee,)
)
 v.)
)
 WILLIS CHEVROLET, INC.)
)
 Employer.)

Hearing No. 1420341

DECISION ON PETITION TO DETERMINE 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 on July 9, 2015, in the Hearing Room of the Board, in Milford, Delaware.

PRESENT:

MARY MCKENZIE DANTZLER

PATRICIA MAULL

D. Massaro, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Jonathan B. O'Neill, Attorney for the Employee

Joseph Andrews, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

On April 9, 2015 Alexandria C. Norris ("Claimant") filed a Petition to Determine Compensation Due alleging that she injured her right knee and ankle in a work accident on October 29, 2014, while she was working for Willis Chevrolet, Inc. ("Employer"). Claimant now seeks a determination that treatment of her right knee, including a surgical procedure proposed by Dr. Michael Axe, is causally related to the work accident, as well as total disability during her recovery from surgery. Employer does not dispute that the work accident occurred, but argues that Claimant's right knee issues were not caused by it. Claimant's average weekly wage at the time of the incident was \$358.98, resulting in a compensation rate of \$239.32.

A hearing was held on Claimant's petition on July 9, 2015. This is the decision on the merits of Claimant's petition.

SUMMARY OF THE EVIDENCE

Dr. Michael J. Axe, orthopedic surgeon, testified at the hearing by deposition on behalf of Claimant (Claimant's Exhibit No. 1). He began treating Claimant on May 22, 2012 and reviewed the pertinent medical records. In his opinion the October 29, 2014 work accident accelerated Claimant's need for right knee surgery.

Claimant first saw Dr. Axe in 2012 because her left kneecap was coming out of place. She had an underlying physiologic incompatibility in that her kneecap sat too high and the groove which her kneecap fits into was too shallow. Also, the muscles that support the kneecap were too long. She failed non-operative measures, so on December 18, 2012 she underwent surgery to correct those three problems.

Then on December 8, 2013 Claimant saw Dr. Axe for her right knee pain, with no radiation, that had started two weeks previous. An MRI was unremarkable. Radiographs showed that her kneecap was too high and had a lateral positioning to it. Dr. Axe notes that both of Claimant's knees had been a problem and her left knee had surgically corrected effectively. He informed Claimant that her right knee was going to need surgery in the future. It was not imminent and it was Claimant's decision as to when to proceed. She had just been through a nine month recovery from the left knee procedure and wanted to have a chance to allow that knee to recuperate. It takes about eighteen months for full healing. She was released from treatment for the left knee on December 23, 2013, to be seen on an as needed basis.

Claimant returned next in November of 2014 reporting an injury at work in which she injured her right ankle and knee. She described walking down a set of stairs holding onto the railing when she rolled her ankle and fell onto her knee awkwardly. She stated that her kneecap was dislocated, which she says had happened on several occasions in the past.

Claimant went to Christiana Care Walk-In Clinic after work and after radiographs were taken she was diagnosed with a right knee and ankle sprain. She was told to use ice and nonsteroidals as an anti-inflammatory. She was placed in an air cast to stabilize her ankle. She did not injure her left knee.

On physical examination Dr. Axe found a Grade 2 right ankle sprain. Her knee was consistent with the fact that her kneecap had slipped out of place. Claimant had a significantly positive apprehension test. Her ligaments were not abnormal, and there was no damage to the blood vessels. She did not break off any pieces. So in the work accident she sustained a right ankle sprain and a right knee injury. She was sent to therapy for the ankle and given a reaction brace for the right knee. As far as the right knee she had a pre-existing condition which she had been able to deal with without bracing, perform most activities of daily living and avoiding at risk activities prior to the work accident. Now the question is whether she could get back to that or need surgery sooner rather than later.

By November 19, 2014 Claimant had undergone some therapy and her right ankle was doing better. She continued to wear the knee brace. Dr. Axe explained that whatever check rein she had holding her kneecap central was now compromised and no longer able to do that. So she was totally reliant upon her muscularity as opposed to her ligamentous attachments to be able to hold the kneecap in place.

By December of 2014 Claimant was having blisters because of the brace so a sleeve was added to reduce this. By January of 2015 her strength was ninety one percent which means that muscle weakness is not causing her instability or giving way. Claimant was having issues with activities of daily living. If she took the brace off to walk around her house she felt as if she was

ready to fall. So the proximal and distal realignment surgery is necessary now. This is the exact same procedure that was performed on her left knee in December of 2012.

Dr. Axe has seen Claimant twice in March of 2015 and her condition remains the same, as she needs the procedure. If it is not done now she will have an unstable and arthritic knee. If the operation is not performed it is a very disabling condition which often leads to chronic pain. The surgery is now pending the outcome of this case.

As far as causation, Claimant had a right ankle injury related to the work accident which has resolved. Dr. Axe opines that the work injury of October 29, 2014 accelerated the need for the right knee surgery. Claimant is having difficulties even with the brace and this is something that she was not wearing in the months before the work accident. She only used the brace for at risk activities. She would have needed the right knee surgery eventually, but it was undetermined when that would have been. The recovery is long so timing is based upon when the patient chooses. The surgery proposed and Claimant's right ankle and knee treatment thus far has been reasonable, necessary and related to the work accident. Dr. Axe does not believe that Claimant can wait for surgery as she has an untrustworthy knee and it needs to be done now. Claimant was doing okay until the fall.

Claimant would be out of work for at least eight weeks as a consequence of the procedure. She would be off the significant and heavy pain medications by week four and if possible could work from home. Dr. Axe notes that the surgery is complex and it is necessary to have a team in place for a successful result. He does not know any local surgeons who do as many of them as he does.

On cross-examination Dr. Axe believes that in the course of spraining her ankle, Claimant's right knee was also injured. He believes that the knee was hurt by having the patella

dislocate and that the ankle contributed to the fact. In doing so she tore those other structures within the knee that were holding it in place prior. This diagnosis is based upon her clinical exam and the failure of her response to therapy.

Dr. Axe agrees that Claimant underwent a right lateral release knee surgery in 2007 with Dr. Glen Rowe. He was unaware of a 2003 right knee procedure referred to in her family practice records. He agrees that Claimant has genu valgum, or is knock kneed. He agrees that the proposed surgery is to correct a genetic abnormality. It is one of the risk factors for patellar instability. He agrees that Claimant is extremely obese and this places stress and strain on the knees.

Dr. Axe agrees that Claimant has a predisposition or history of patellar instability in both knees that predates the work accident. He agrees that after he reviewed the December of 2013 MRI of the right knee he indicated that Claimant will most probably need a distal realignment of the right knee sometime in the future which is to correct genu valgum and the patella alta.

Dr. Axe agrees that when Claimant saw him on November 7, 2014 she told him that her right kneecap dislocated on October 29, 2014 and that this had happened on several occasions in the past.

Dr. Axe agrees that Claimant's physical therapy records after the work accident indicate that on November 3, 2014 her right knee pain only slightly affected her activity, and she had no stiffness, swelling, giving way, buckling, shifting, weakness or limping related to the right knee. She admitted on the therapy form that her right knee was nearly normal. By November 14, 2014 her pain levels were back to baseline and she felt a right patella subluxation that day. By November 17, 2014 this had continued despite using the patellar tracking brace. Dr. Axe explained that this is why she was changed to the reaction knee brace which can control both

directions. She continued to have giving way or popping out of the right patella in her therapy notes.

Dr. Axe agrees that his November 7, 2014 note indicates that Claimant had a new right ankle injury and that she has had chronic problems with her right knee and she felt her right kneecap dislocate. She has had several dislocations in the past. On examination there was no effusion of the right knee. There was no fluid within the knee so Dr. Axe did not believe there was any damage to the bony and articular surfaces.

Dr. Axe also explained that the lateral release which Claimant had in 2007 is no longer in vogue for patella alta. However, a lateral release is done in the course of the proximal distal realignment if necessary. The lateral release procedure is done for pain however; it does not correct the mechanical abnormality that leads to dislocation. It simply loosens the structure rendering the kneecap floppy. Dr. Axe indicated that prior to the work accident Claimant was performing home exercises to help maintain the strength of her thighs due to her condition.

In the work accident Dr. Axe does not believe that the right knee gave out and then that caused the rolling of the ankle because it would have had to have been a sizeable event within the knee that would have led to swelling. He agrees it is within the realm of possibility for the knee to have given out first, but it is a low one.

On re-direct examination Dr. Axe agrees that there are no medical records of Claimant complaining of right knee dislocation from December of 2013 until after the work accident. So she had the condition under control. The proposed surgery is not to treat pain.

Claimant testified at the hearing on her own behalf. She is in her senior year of college working on a Bachelor's degree. She works for Employer as a secretary and cashier.

Claimant has a congenital knee condition wherein her knee caps sit too high and this causes them to dislocate. She underwent a lateral release right knee surgery in 2007 by Dr. Rowe. Then in 2012 Dr. Michael Axe performed a proximal distal realignment of her left knee.

In 2013 Claimant saw Dr. Axe for her right knee because it had dislocated and she wanted to make sure it was okay. He released her from care in December of 2013 indicating that somewhere down the line she would need the same surgery as she had on the left knee.

Before the work accident Claimant was doing fine with respect to the right knee. She was able to perform her activities of daily living without a knee brace. She was able to squat, walk on the beach; walk around water parks, etc. She had issues with the right knee cap dislocating approximately once every three months. This did not bring her back to the doctor or affect her activities of daily living.

On October 29, 2014 Claimant was walking to the collision center with work documents in hand and a co-worker was asking her a question as she was stepping down one step. Her ankle rolled and this fall caused her knee to dislocate. She was holding onto the railing and a co-worker brought her a chair. She got her bearings and then went to collision center and contacted the necessary people to report her injury. She reiterated that she miss-stepped which caused her to roll her ankle and her body came down on her knee. Her right knee then dislocated. She felt pain in her right ankle and knee. She was waiting for Human Resources to tell her what she needed to do. Then around 5:00 p.m. she went to a medical aid unit and was given an air cast; ice for the knee and ankle and told to use Ibuprofen.

Claimant saw Dr. Michael Axe about a week later and he recommended physical therapy for the ankle and knee. This helped, but she still had giving way, buckling and pain. Her right knee continues to buckle and give way frequently which she had not experienced before the

work accident. Dr. Axe recommends the same surgery for her knee now that she had on her left knee in 2012. He states it will address the buckling and giving way problems.

Dr. Axe gave Claimant a prescription for a reaction knee brace which she wears now. She did not need the brace before the work accident. It has two straps and keeps the knee in place. She wears it every day. It is uncomfortable. If she does not wear it her knee feels like it could move left or right and she does not feel stable.

Claimant has not had any new injuries to her right knee since the work accident. Everything has happened afterward. She plans on having surgery with Dr. Axe

On cross-examination Claimant indicated that before the work accident her right knee would dislocate approximately once every three months. She agrees that it dislocated around three months or so before the work accident.

Claimant agrees that the co-worker who she was talking to at the time of the incident was Ronald Dupris and that his desk is adjacent to the step where she fell. She agrees that he had a good view of her fall. She agrees that her statements immediately after the fall would be true.

When Claimant had surgery on the left knee she was out of work for several months without pay because it was not a worker's compensation claim. She knows that if it is deemed a worker's compensation injury then she is entitled to total disability for the time she is off work.

Claimant has worn her right knee brace daily since November of 2014. Claimant demonstrated the brace to the Board. It is attached by Velcro straps wrapped around the knee. She agrees that when she steps the brace shows through her pant legs.

The reason she did not see Dr. Axe until November 7, 2014, or a week after the accident is because this was the earliest she could get in. He indicated that her right knee cap dislocated and did not think she had any other damage.

When Claimant treated with Premiere Physical Therapy on November 10, 2014 she signed a personal information form. On the form, she agrees that she indicated that her right knee function was nearly normal. She was to check certain symptoms and indicated that she had no stiffness, swelling, giving way, buckling or shifting of the knee. She also indicated that she had no weakness or limping. Walking, standing or sitting was not difficult, nor was rising from a chair. She agrees that this was three days after she saw Dr. Axe.

On re-direct examination Claimant clarified that at her therapy visit on November 10, 2014 she was having right knee pain which she rated at five on a ten point scale, and most days it was a six. Prior to the work accident she would rate her knee pain at one to non-existent.

On re-direct examination Claimant explained that when her right knee would dislocate prior to the work accident she would ice it and take Tylenol. Usually, she did not need to use ice. Now if she is not wearing the brace it dislocates.

On re-cross-examination Claimant states that since the work accident her right knee pain has not gone completely away. During the middle of her first session of therapy, it went down to baseline, but it came back up due to buckling and shifting problem that she has now. She stopped therapy in February of 2015. Claimant was read a November 14, 2014 therapy note which indicates that her pain levels had decreased to baseline. She agrees that this occurred for that day. Claimant has recovered from her right ankle sprain.

Upon questioning by the Board Claimant further described the fall. The right knee did not sustain any impact as she caught herself in a squatting position before she fell out on the ground.

She was on her way down the step when the incident occurred. It is one step. Her foot was almost all the way to the ground. When she opened her eyes she was in a squatting position.

She was half way from where she was standing to the ground. She had started going down the one step and her foot was almost to the ground. Then she opened her eyes. She does not know how her left foot got to be next to her right foot. She walked down step and she felt her ankle roll first and then her knee dislocated. To her recollection she did not tell Mr. Dupris the opposite.

In the past, when her knee dislocated it has occurred when walking, going up and down stairs and getting up from a sitting position. Dislocation sometimes occurs now when she is in the brace.

On re-direct examination Claimant clarified that she rolled her ankle coming off the step onto the ground. When she rolled her right ankle it caused her knee to dislocate.

Ronald Dupris, Assistant Service Manager, testified at the hearing by videotape deposition on Employer's behalf (Employer's Exhibit No. 1, transcript; Employer's Exhibit No. 2, DVD). He has worked for Employer for nine years. He is located in the main building. Claimant is a co-worker and she is in the body shop which is about 100 yards away in a different building. She walks by his desk probably about twelve times a day.

He knows that she underwent left knee surgery in the past. She wore a knee brace around that time and used crutches.

On the day of the work accident Claimant walked in front of his desk where there is one step. Mr. Dupris explained that the step is right in front of his desk. She caught herself with the railing when she was about to fall. She said to him that her right knee had given out causing her ankle to roll so Mr. Dupris got a chair for her to sit in. She said she was going to need surgery on that knee, just like the other knee. She said that she needed to get right knee surgery and was putting it off.

After the incident he does not remember seeing Claimant the rest of the day. He does not remember her limping. He said he just got a chair for her and sat her down right after the almost fall.

Mr. Dupris does not recall seeing Claimant wear a right knee brace, or acting in any different way since the work accident. She continues to walk by his desk approximately twelve times a day and is not limping.

On cross-examination he agrees that he wrote a statement for Employer on March 6, 2014. He explained that this was at the request of Amy Thompson, the Human Resources Manager. He agrees that he wrote it three months after the event and it was to the best of his recollection. He remembers the day and states he would make same statement if he had been asked about it on the day of the event, as his recollection is the same. Mr. Dupris continues to work for Employer.

On re-direct examination Mr. Dupris is not aware of any video footage of the incident. There was no water on the floor. The same area is for customers as well.

Amy Thompson, Human Resources Manager, testified at the hearing on Employer's behalf. She confirmed that the March 6, 2014 statement by Mr. Dupris was requested by her in response to a request from the insurance company (Employer's Exhibit No. 3). The reason for the delay is that she did not request it until asked by the insurance company to determine if there were any witnesses to the event and to obtain a statement. Employer only obtains witness statements if the insurance carrier requests it and this is her first time to do so. She had no reason to ask for a statement before as she did not know litigation had ensued. Employer is a small family owned business.

On cross-examination Ms. Thompson agrees that Mr. Dupris has worked for Employer for a long time and has continued to do so. She does not necessarily agree that memory is better closer in time to the incident.

Upon questioning by the Board she clarified that Claimant came to her later in the day, around 4:30 p.m. and reported the incident. A first report of injury was completed and Claimant was informed she could see any physician she desired.

On re-cross examination Ms. Thomas agrees that she was informed of the injury by Claimant on the date it occurred.¹

Dr. Andrew Gelman, orthopedic surgeon, testified at the hearing by deposition on behalf of Employer (Employer's Exhibit No. 4). He examined Claimant on May 29, 2015 and reviewed the pertinent medical records. In his opinion Claimant's need for right knee surgery is causally related to her pre-existing genu valgum and patella alta condition, not the work accident.

At her DME Claimant indicated that she had been having ongoing right knee difficulties, most recently on October 29, 2014 she turned her right ankle injuring her right ankle and again experiencing a subluxation or dislocation of her kneecap. She had treated previously with Dr. Axe for her right knee and resumed care with him, participating in therapy. She was considering surgical treatment.

By way of history Claimant indicated that the first time she experienced a right patellar dislocation was in 2006 in gym class. Then in 2007 she underwent the lateral release by Dr.

¹ When Ms. Thompson was asked about an e-mail exchange with Claimant on the date of the incident Employer objected to the document and line of questioning as it had not been produced in discovery. Claimant counters that he was not advised until the day before the hearing that Ms. Thompson would testify. Claimant maintains that the document is being used to impeach the witness. Initially, questioning about the e-mail was permitted by the Board, however, it became clear that the e-mail was actually being offered to impeach Mr. Dupris' testimony and not Ms. Thompson's testimony so the objection was ultimately sustained. Also, the e-mail correspondence was not raised until re-cross examination of the witness. The Board notes that Ms. Thompson has been listed as a trial witness both on the Pre-Trial Memorandum and via a letter dated June 8, 2015 from Employer's counsel to the Board and copied to Claimant's counsel thus, providing ample notice for preparation before the hearing.

Rowe. In 2013, before the work accident, she experienced more right knee subluxations and dislocations for which she was treating with Dr. Axe. She was always able to self-reduce the patella each time.

Dr. Gelman explained that the patella is the kneecap. The method to self-reduce it is to gently straighten the knee and then the kneecap will typically flip back into its anatomical position. Claimant represented that there were a couple of these events sometime between 2013 and the October 29, 2014 work accident in which her right kneecap went out or dislocated and she was able to self-reduce. Dr. Gelman believes that this is a continuum of her anatomy and physiology which has predisposed her for right patella instability.

Dr. Gelman explained that Claimant's diagnosis of patella alta refers to a high-riding patella which means that the kneecap is pulled by the quadriceps into a high position relative to the front of the knee. Dr. Axe previously treated her left knee for the identical issue and performed surgery. Then on December 8, 2013 Claimant began treating with Dr. Axe for right knee pain with increasing episodes of dislocation of the patella. She said it started while descending stairs and that she had a history of patellar dislocation. Radiographs revealed patella alta and a hypoplastic trochlear groove in the right knee. She was instructed with exercises pending a planned MRI. Subsequent to the right knee MRI in December of 2013 Dr. Axe stated that she most probably will need a distal realignment sometime in the future, or the same surgery performed on her left knee in 2012.

Then after the work accident, on November 7, 2014, Claimant saw Dr. Axe stating that her right knee dislocated on October 29, 2014 and Dr. Axe also notes that Claimant indicated that she has had several dislocations of the right knee prior to the work accident. Dr. Axe's history on that date indicates that Claimant had a new injury to her right ankle, and has had

chronic problems with her right knee. She felt her right knee dislocate and has had several dislocations in the past. Her right knee showed no effusion, but she was apprehensive. Dr. Axe did not doubt that she subluxed it and it came back into place, but did not think that she did any further damage to her right knee. Dr. Gelman believes that Dr. Axe is referring to the fact that she did not break the kneecap or sustain cartilage or other internal structural damage. So Dr. Axe focused on the chronic instability which he is addressing over time. There is nothing different relative to this knee when compared with her problems previously. Claimant has had chronic issues and after each of her previous dislocations or subluxations and periods of irritability she has always settled down, just as she has in this case.

On January 14, 2015 Dr. Axe recommended a distal realignment surgery of Claimant's right knee. That is the same surgery he was recommending on December 23, 2013 and is the same surgery she had done previously in 2012 on the left knee.

As far as her use of the brace, it is elective though not necessarily different than what others may have advised through the years. It is offered to address a chronicity, not something different. This is a conservative option addressing a chronic right knee problem. Dr. Gelman notes that on November 10, 2014 Claimant completed a form for Premier Physical Therapy in which she stated that five days after October 29, 2104 she tried to squat, but it caused more right knee pain.

On physical examination at her DME Claimant was extremely obese. She presented with a right knee brace which was removed for examination purposes. She favored her right lower extremity when walking without it. There was apprehension with Dr. Gelman physically maneuvering the kneecap or patella both inward and outward. The right patella was hypermobile. Her hamstring and quadriceps muscles were normal with respect to strength and

working relative to the right leg. She is relatively knock kneed. There were no meniscus or ligamentous signs.

Dr. Gelman explained that Claimant has a hypoplastic or flattening of the groove, meaning that her kneecap just slides in the front of her thigh which is a genetic predisposition that further contributes to the other parameters that predisposed her with regard to left knee instability, including her obesity.

Dr. Gelman agrees that the December 27, 2013 MRI of the right knee shows a right laterally subluxed patella within a shallow appearing trochlear groove as well as a surgical defect within the lateral patellar consistent with her previous lateral release.

Dr. Gelman has no reason not to believe Claimant that she rolled her right ankle in the work accident. He diagnoses it as an ankle sprain or strain which resolved quickly as it was not much at issue when she was seen by Dr. Axe starting in November of 2014.

With respect to the right knee Dr. Gelman opines that by the time of her DME in May of 2015 Claimant had returned to her pre-October of 2014 baseline condition. The cause and need for surgery pre-dates the work accident. Claimant had chronic instability as a result of her physiology, anatomy and size. She has decided to proceed with stabilization. This is not because of the incident on October 29, 2014, but rather her long-standing, chronic instability. So while Dr. Gelman opines that the proposed procedure is reasonable and necessary, it is not causally related to the work accident. Regardless of causation, if Claimant proceeds with the surgery it would take at least six months to reach maximum medical improvement. She should be able to return to sedentary work within two to three weeks.

On cross-examination Dr. Gelman agrees that there was some injury to the ankle and knee in the work accident, but both were short-lived. Dr. Gelman agrees that while Dr. Axe

recommended the right knee distal realignment in December of 2013 he did not recommend it on that particular date. However, Dr. Gelman notes that the procedure is elective and has been throughout. It remains elective. He agrees that her condition was stable in December of 2013 and she was released to be seen on an as needed basis.

Dr. Gelman has not seen any medical records that reveal any event, other than the work accident, concerning her knee from December of 2013 through October of 2014, or afterward, other than the November 10, 2014 therapy note wherein she states squatting was somewhat painful. He opines that this physical therapy is related to her predisposition and chronic instability and not the work accident. He agrees that she had a dislocation on October 29, 2014, just as she had periodically before. This appears to be the first time she had physical therapy for the right knee, other than perhaps in association with her treatment in 2007.

On re-direct examination Dr. Gelman agrees that therapy records indicate that Claimant's right knee gave out a few times after the work accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Compensability

The Delaware Workers' Compensation Act ("Act") states that employees are entitled to compensation "for personal injury or death by accident arising out of and in the course of employment." DEL. CODE ANN. tit. 19, § 2304. Because Claimant has filed the current petition, she has the burden of proof. DEL. CODE ANN. tit. 29, § 10125(c). "The claimant has the burden of proving causation not to a certainty but only by a preponderance of the evidence." *Goicuria v. Kauffman's Furniture*, 1997 WL 817889 at *2 (Del. Super. Ct.), *aff'd*, 706 A.2d 26 (Del. 1998).

The Act is the exclusive remedy between employer and employee for "personal injury or death by accident arising out of and in the course of employment." DEL. CODE ANN. tit. 19, § 2304. There is no dispute that Claimant's fall happened "in the course of employment." That term "refers to the time, place and circumstances of the injury." *Rose v. Cadillac Fairview Shopping Center Properties (Delaware), Inc.*, 668 A.2d 782, 786 (Del. Super. 1995)(citing *Dravo Corp. v. Strosnider*, 45 A.2d 542, 543 (Del. Super. 1945)), *aff'd sub nom. Rose v. Sears, Roebuck & Co.*, 676 A.2d 906 (Del. 1996). "[T]o be compensable, the injury must first have been caused in a time and place where it would be reasonable for the employee to be under the circumstances." *Rose*, 668 A.2d at 786. Undoubtedly, Claimant's injury happened in a time and place where it was reasonable for her to be under the circumstances. It is not disputed that she did actually fall, or slip, at work.

The real issue for purposes of this decision is whether Claimant's injury can be said to have arisen out of her employment. This prong of the analysis "relates to the origin of the accident and its cause." *Rose v. Cadillac Fairview Shopping Center Properties (Delaware), Inc.*, 668 A.2d 782, 786 (Del. Super. 1995). For the purposes of this prong, it "is sufficient if the

injury arises from a situation which is an incident or has a reasonable relation to the employment.” *Dravo* 45 A.2d at 544. In other words, “there must be a reasonable causal connection between the injury and the employment.” *Rose*, 668 A.2d at 786. *See also Parsons v. Mumford*, 1997 WL 819122 at *3 (Del. Super. Ct.). However, an “essential causal relationship between the employment and the injury is unnecessary. . . . [T]he employee does not have to be injured during a job-related activity to be eligible for worker’s compensation benefits.” *Tickles v. PNC Bank*, 703 A.2d 633, 637 (Del. 1997)(citing *Storm v. Karl-Mil, Inc.*, 460 A.2d 519, 521 (Del. 1983)). In this case, Employer argues that Claimant’s fall did not arise out of her employment because it was the result of a medical condition unconnected to that employment. All experts agree that Claimant has a pre-existing right knee condition, or genu valgum and patella alta, which causes her knee to dislocate. Claimant maintains that because the ankle rolled first and the knee dislocated afterward it is therefore a compensable injury because it arose out of her employ and not her medical condition.

Under the “idiopathic fall” doctrine, an injury sustained in a fall caused by a condition personal to the claimant does not arise out of the employment unless the employment contributed to the risk or aggravated the injury. *See Arthur Larson & Lex K. Larson, Larson’s Workers’ Compensation Law*, § 9.01 (internet ed., <www.matthewbender.com>).² In an “idiopathic fall” situation, the origin is deemed personal to the claimant and, to succeed on a workers’

² The “idiopathic fall” doctrine is distinct and different from the “unexplained fall” doctrine. In the latter, the origin of the fall is neutral (unexplained) while in the former the origin is from a condition personal to the claimant. Larson, at §9.01[1]. In an “unexplained fall” case, a claimant can recover based on a mere positional-risk theory that the employment brought the employee to the place at the time of injury. Larson, at §9.01[4][b]. This is similar to the distinction made in workers’ compensation cases involving assault. An injury is not compensable if it is the result of an attack directed against the employee for reasons that are personal to the victim, but would be compensable if the attack is neutral in nature or directed towards the victim as an employee or because of the employment. *See Rose*, 668 A.2d at 790; *Ward v. General Motors Corp.*, 431 A.2d 1277, 1280 (Del. Super. 1981); *Brogan v. Value City Furniture*, 2002 WL 499721 at *4 (Del. Super. Ct.).

compensation claim, the claimant must show some substantial employment contribution to the harm. *See* Larson, at §9.01[4][b].

Delaware case law has recognized that idiopathic falls are not compensable. In *Lecates v. Harrison House of Delmar*, Del. Super., C.A. No. 89A-AP1, Lee, J (September 28, 1990), the claimant fainted at work while unloading a dishwasher. She had had two “near-fainting” spells in the two weeks before the accident. The claimant’s doctor was not asked what caused her to faint, but the employer’s doctor testified that the fainting was due to a medical condition of the claimant that was unrelated to her work. Judge Lee held that the injury from the fall was not compensable because it was uncontroverted that the cause of the fall was the faint, and it was also uncontroverted that the faint was caused by a medical condition unrelated to employment. *Lecates*, at 4.

Because it is asserting the defense, the burden is on Employer to establish that Claimant fell as the result of a personal medical condition. In the current case, the Board finds the evidence sufficient to conclude that Claimant’s fall was caused by a medical condition unrelated to her employment. Claimant’s bilateral knee genu valgum, patella subluxation and patella alta are well documented. As Dr. Axe describes it she has an underlying physiologic incompatibility such that her kneecap sits too high and the groove which her kneecap fits into is too shallow. Thus, she is susceptible to knee dislocations and in December of 2013 Dr. Axe’s record indicates that the right knee was going to need surgery in the future. Dr. Axe opines here that the work accident accelerated her need for this proximal and distal realignment surgery, while Dr. Gelman opines that the need for surgery at this time would have occurred anyway. The real question though is what caused her fall at work. Was it the ankle rolling on the step at work which then caused the knee to dislocate or did the knee dislocate first because of her condition causing her to

slip and then roll the ankle? The parties agree that if it was the latter then the incident was caused by Claimant's personal medical condition and has not arisen out of her employment.

Claimant maintains that her ankle rolled and then she slipped causing the knee to dislocate. The Board finds that the evidence does not support her assertion. To begin with Employer presents the credible testimony of Mr. Dupris. By all accounts his desk is near the step where the incident occurred. He helped Claimant into a chair when she slipped.

Importantly, Mr. Dupris testified as to Claimant's statements immediately after the event. She stated that her right knee had given out causing her ankle to roll. She said that she was going to have surgery on that knee, just like the other knee, but she had been putting it off. This is consistent with her medical records and even her assertions afterward to the doctor that the knee had dislocated several times in the past year. She has always been able to reduce it herself. Interestingly, Claimant even agreed during her testimony that her statements immediately after the fall would be true. She agrees that Mr. Dupris had a good view of her fall. The Board believes Mr. Dupris regarding these spontaneous remarks made by Claimant concurrently with the incident. This is personal, private information about Claimant that Mr. Dupris as a co-worker would likely not have access to unless Claimant had revealed it to him.

Moreover, the Board is somewhat troubled by Claimant's own nebulous description of her slip at work. Claimant never clearly describes coming down first on her foot or ankle causing it to roll. Confusing as well is that she refers to her body coming down on her right knee, but then later explained that there was no physical impact on the knee.

When asked directly by the Board to describe the work accident Claimant stated that her foot was almost all the way to the ground and then when she opened her eyes she was in a squatting position. She was half way from where she was standing to the ground. She had

started going down the one step and her foot was almost to the ground. Then she opened her eyes and found herself there. She stated specifically that she does not know how her left foot got to be next to her right foot. This is not convincing testimony. To the Board it is more supportive of a finding that the knee dislocated first, rather than the ankle rolling first. So essentially, when asked directly about the fall Claimant's testimony was uncertain. She does not remember telling Mr. Dupris that it was her knee that gave out first, but this does not mean that her statements did not occur. Overall, Mr. Dupris testified with much more certainty about the incident than did Claimant.

Additionally, Claimant does not deny that in the past she could be walking, going up and down stairs or getting up from a sitting position when her knee would dislocate. So it is not inconceivable that her knee dislocated first, rather it is more believable to the Board that it did. Even her expert admits that this is a possibility. He says the probability is low because it would have been a sizeable event within the knee that would have led to swelling. This testimony is somewhat internally inconsistent because Dr. Axe agrees that Claimant dislocated the knee in the work accident and by all accounts there was no swelling. So he is saying that the swelling would only have occurred if the knee dislocated before the ankle roll and this does not make sense.

Claimant argues that Mr. Dupris has a self-interest because he remains employed by Employer and also that his statement is not reliable because it was first made three months after the work accident. The Board finds that both of these arguments fail.

First, both Mr. Dupris and Claimant continue to work for Employer. Additionally, there is no evidence of any disagreement or animosity between them. Here Mr. Dupris has made a statement under oath regarding the events of October 29, 2014 and the Board finds him believable. There is no evidence to support that he has any bias here. He is simply stating what

happened that day. As Employer points out, Claimant has a much stronger self-interest in the outcome of this case than does Mr. Dupris.

That Mr. Dupris first prepared a written statement approximately four months after the work incident also does not detract from his credibility. Claimant maintains that she informed her doctors that the ankle rolled first and then the knee gave out and this was within a week or so after the incident so it is more reliable evidence. However, Mr. Dupris seems credible to the Board. He testified convincingly that he remembers the day and that his statement would be the same if he had been asked to make it the day of the event as his recollection remains the same. This is enough for the Board to determine that it is believable.

In summary, Claimant's description of the work accident is not definitive, but rather imprecise. It does not support her assertion that the incident was caused by her right ankle rolling first which caused a knee dislocation. She would necessarily have to step on the right foot or ankle first to cause it to roll and this never comes out distinctly in her testimony. There is just not enough evidence to substantiate her argument.

Therefore, the Board concludes that on October 29, 2014 Claimant's right knee dislocated as she was walking down a step at work, as it was prone to do given her pre-existing condition. It was this knee dislocation that caused the right knee and ankle injuries, and did not arise out of her employment. The Board finds that Claimant's personal condition was the cause of her fall and/or slip at work on October 29, 2014. As such, Claimant's fall does not constitute a compensable work accident.

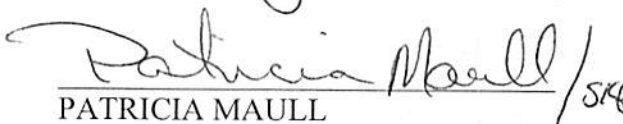
STATEMENT OF THE DETERMINATION

For the reasons stated above, the Board finds that the evidence supports a finding that on October 29, 2014 Claimant's right knee dislocated first, causing her ankle to roll and ultimately resulting in her injuries. Thus, the fall was idiopathic and did not arise out of Claimant's employment, rather it was the result of her pre-existing genu valgum and patella alta which predispose her to patella instability. As a result this is not a compensable work injury as it did not arise out of her employment. As such Claimant's petition is **DENIED**.

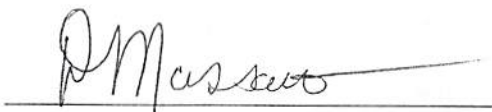
IT IS SO ORDERED THIS 29th DAY OF JULY, 2015.

INDUSTRIAL ACCIDENT BOARD


MARY MCKENZIE DANTZLER


PATRICIA MAULL

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



Mailed Date: 7.30.15


OWC Staff