BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

DARIA CANNEDY,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1448860
	)	
GEM AMBULANCE,	)	
	)	
Employer.	)	

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 Monday March 31, 2017, in the Hearing Room of the Board, in Wilmington, Delaware.

PRESENT:

GEMMA BUCKLEY

ROBERT MITCHELL

Eric D. Boyle, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

D. Miika Roggio, Attorney for the Employee

Joseph Andrews, Attorney for Employer

NATURE AND STAGE OF THE PROCEEDINGS

On October 11, 2016, Daria Cannedy ("Claimant") alleges that she was injured while in the course and scope of her employment with GEM Ambulance ("Employer"). Claimant alleges that she sustained an injury to her right knee that resulted in periods of total and partial disability as well as medical expenses. Claimant's average weekly wage was $710.40 which yields a compensation rate of $473.60. Claimant returned to work with restrictions on October 24, 2016 and until November 14, 2016 was paid at a reduced rate. The parties have agreed that the partial disability, if owed, for this period would be based on an average weekly wage of $414.00 resulting in a compensation rate of $197.60. Claimant has returned to work full duty. The issues presented are whether Claimant suffered a work related knee injury on October 11, 2016 and if so, has that injury resolved. A hearing was held on Claimant's petition on March 31, 2017. This is the Board's decision on the merits.

SUMMARY OF THE EVIDENCE

Dr. Matthew Handling, a board certified orthopedic surgeon, testified by deposition on behalf of Claimant. Dr. Handling initially saw Claimant for treatment on December 2, 2016. She had presented with right knee pain which by her history started on October 11, 2016. Claimant reported that she had been lifting an isolette into an ambulance and felt a pop in her right knee with immediate pain and swelling. She had been seen by Omega Occupational Health with a referral to Dr. Gelman. On Dr. Handling's initial examination Claimant was complaining of right knee pain aggravated with sitting for a prolonged period and walking. There was some improvement since the day of the incident. On physical exam Claimant had swelling in the knee along with tenderness in the joint line as well as other areas of the knee including the patella and the medial joint line. There was some loss of range of motion with pain on range of motion. An

MRI that was taken on October 21 showed some degeneration in the knee along with a cartilage flap underneath the patella. This could have potentially been a loose fragment. There was also some synovitis noted. Dr. Handling agreed that it may be a possibility that the cartilage flap could have been caused by the accident because the Claimant did report a pop in the knee. This type of the flap could cause irritation underneath the knee and resultant pain.

Dr. Handling was of the opinion that the accident could cause a loose body. Dr. Handling indicated on his December note under the assessment that Claimant had developed a loose body as a result of the accident. He noted that while she was not experiencing catching as a result of the loose body this could happen in the future. By this Dr. Handling meant that loose bodies float around the knee or embed in the lining of the joint. Sometimes they get caught and don't cause symptoms and other times they can break free and lock into the joint which would start catching and require arthroscopic surgery. Dr. Handling explained that the synovitis was inflammation in the lining of the knee joint typically as a result of some type of aggravation or injury. Since Claimant wasn't having me pain prior to the incident it would be reasonable to conclude that the synovitis was the result of the injury. Dr. Handling's diagnosis of Claimant was pain in the knee joint, loose body of the right knee, synovitis of the right knee and osteoarthritis of the right knee.

Dr. Handling did agree that Claimant had a pre-existing history of knee pain. The history that she gave was of knee pain requiring a visit to an orthopedic surgeon and an injection 10 years previously. She denied any issues with the knee since that time. Dr. Handling summarized Claimant's course of treatment which included the visit to occupational health, with a referral to Dr. Gelman, who did an injection which gave partial relief. Claimant also had physical therapy which she reported was very helpful. She also was provided with a knee brace. Claimant had improvement initially over the course of her treatment. Dr. Handling saw Claimant again on

January 20 and she was doing well but still at risk for future problems. He last saw her on March 13 with recurrent pain in the knee. Dr. Handling further explained his concern in the short term would be that the loose body could potentially break free and cause locking in the knee. She has arthritis so is at risk for episodes of aggravation of this arthritis, one of which was the work injury. His primary concern was the loose body. On March 13 Claimant reported increasing pain becoming more constant. She denied any new injuries. She was not taking any pain medication. Dr. Handling injected her with a steroid injection and sent Claimant for more physical therapy. He ordered a different brace and recommended a return visit in a month. Dr. Handling expects that Claimant will require additional treatment on the knee although he's going to see how she does over the next month. He noted that potentially she may require further injections, lubricating injections or further physical therapy. In Dr. Handling's opinion the work accident caused Claimant problems with her right knee. He believes that all the medical treatment that Claimant has had was reasonable, necessary and causally related to that accident. He does not believe that her injury has resolved. He could not predict whether there is any permanent impairment as a result of the accident.

On cross examination Dr. Handling agreed that history provided by Claimant was important with respect to causation. If he later learned that the history was inaccurate or the mechanism of injury was different than it may possibly cause him to change his opinion. He agreed that if his records did not mention other physician's medical notes that probably means that he was unaware of those notes or they were unavailable to him. Dr. Handling was unaware that Claimant treated with Dr. Roberts on December 20, 2011 for right knee pain. He was unaware that she had had severe and ongoing pain for several days that time. He was also unaware that Claimant had her knee gave out while walking up stairs. He also was not aware that

Claimant was found to have crepitus and creaking in her right knee at that time. He was not aware that she was referred to Dr. Pfaff for the right knee in January 2012. Dr. Handling indicated that Claimant did mention Dr. Pfaff to him and noted that she may have had her timeline off because she indicated to him it was 10 years ago. Claimant did admit that she had a past medical history of arthritis. He was not aware that there had been MRIs of the right knee taken previously. Dr. Handling was unaware of the MRI which showed a full thickness articular surface defect in the medial femoral condyle of the right knee. Dr. Handling remarked that that was very similar to the findings from the October 2016 MRI. Dr. Handling reiterated how Claimant described the mechanism of injury and indicated that she was lifting something heavy against resistance straining herself in a squat position and was going to lift up and felt a pop. He noted that an isolette is something that carries an infant for transportation. Claimant did not mention anything about banging her knee or falling. Dr. Handling confirmed that he could say to within a reasonable degree of medical probability that the loose body was caused by this incident. She was not having any pain or symptoms related to the loose body prior to this incident. Dr. Handling further indicated that he would typically relate a loose body to an injury and noted that Claimant's previous treatment looked like it was five years ago. Dr. Handling did concede that a loose body with symptoms was very variable. The loose body that was locked in between the femur and tibia would have significant complaints of pain and locking and would require surgery. A loose body that is free but in what he called the medial gutter could sit there for months at a time not producing symptoms. It was very unpredictable but he could predict it would come loose at some point and cause symptoms. In addition to this loose body Dr. Handling also indicated that the incident flared the pre-existing osteoarthritis and caused synovitis which was documented on the MRI. She has a symptomatic cartilage flap underneath

her knee as well. Dr. Handling further elaborated that if the loose body was in the knee joint between the femur and tibia there would be instant symptoms and treatment would be required within a day. If the fragment was somewhere else and not generally floating around rock around you may not have symptoms for months to a year.

Dr. Handling agreed that a note from Dr. Roberts on October 19 indicating a normal range of motion in the right lower extremity without pain would contradict his assessment that Claimant would be expected to have general pain at the very least in her knee eight days after the injury. A note from Omega on the next day stated that Claimant had extreme pain was unable to walk and her knee pain was at an eight out ten level. That is the kind of record that he would expect. Dr. Handling felt that the general knee sprain or the flare of a pre-existing arthritis could cause the synotivis. Dr. Handling confirmed that he had a normal ligament exam on all three occasions he has seen Claimant. Dr. Handling agreed that based on what he saw on Claimant's MRI she would be prone to aggravation of her osteoarthritis. Dr. Handling admitted that Claimant was pain free as of the January visit. He noted that there are a lot of people with arthritis that aren't having pain until they sustained an injury. He agreed that the aggravation in the arthritis was a temporary flare up by January. He noted that the arthritis is there and if she over works it it's at risk for being symptomatic again. He agreed that she could then have another temporary flare up in the future. He noted it could be long-term it was tough to predict.

Dr. Handling noted that Claimant is at risk for pain in the future and came in on March 13 with recurrent pain. He felt that the two-month time frame was maybe a little too short to look at the picture and one should look out over six months. Dr. Handling agreed that he was not restricting her from any work duties even as of his last visit in March. Dr. Handling agreed that Claimant did not provide them with the history of injuring her right knee playing sports in high

school. Dr. Handling agreed that in January 2017 the loose body was not causing any immediate pain or loss of range of motion. He agreed that the loose body doesn't automatically lead to symptoms. If it gets in the wrong place it can cause symptoms. It is possible that you might migrate into an area that it will not cause symptoms however the more common thingies once it's just large did becomes more symptomatic. Dr. Handling noted that he would like to review all the records that were referenced with respect to Claimant's past treatment of the right knee.

Claimant testified on her own behalf. Claimant lives in Seaford Delaware. She has worked for Employer for three years and is still employed by them. She works as an emergency medical technician or EMT. Her duties include placing patients on stretchers for transportation to and from a hospital or other medical facility and their home. In October she and her partner, Gary Morgan, were on a neonatal (NICU) transport. This involved a piece of equipment called an isolette which is essentially a cube and equipment for a baby that on a stretcher. This was an electric stretcher that weighed approximately 700 pounds. This is because it not only had the cubicle for the baby but also all the gear that goes with it, such as pumps and oxygen bottles. It has an electronic lift but on this occasion it had to be lifted up just a little extra in order to make it into the back of the truck or ambulance. They push the button to lift it up and it comes 90% of the way up and then you have to hit the button again and it gets that last little bit but on this occasion in October it wouldn't lift up the last little bit to get the wheels up into the bed of the ambulance. Claimant had to lift it a couple of extra inches and that is when she felt a pop in her knee with immediate pain. Her partner Gary was raising it with the electronic control as she was guiding it into the ambulance. She had moved around to the side of the stretcher with her knee up against the bumper of the ambulance. It required maximum effort to lift a little bit to get the wheels up. After she felt this pop she was in pain and could not put weight on that leg to help her

partner. She immediately told Gary what happened. They went from Ken General to Christiana Care with the NICU team in the ambulance. After the run she reported her incident to Elaine O'Brien via text message that day. Elaine O'Brien is her supervisor. They then sent Claimant to Omega Medical Center after the pain did not improve later that day. Claimant had intense pain in her knee. At Omega they examined her took x-rays and gave her a knee brace. She also later had an MRI.

The first week after the incident she was using crutches and her knee was locking up. She had a hard time getting up from the seated position, in particular from the toilet. Omega Medical Center referred her to Dr. Gelman who examined her and gave her an injection in her knee. Claimant was not sure if the injection worked but her knee was getting better. She felt that the physical therapy that she was prescribed through Omega was helpful. Ultimately she switched her treatment to Dr. Handling and saw him three times. In December her knee was painful on examination and Dr. Handling gave her home exercises to pursue. On the January 20, 2017 visit her knee was better but not quite normal. She agreed that it was significantly improved. Claimant returned for a visit on March 13 and at that time she was having an episode of knee pain. She also felt that she was favoring the right knee and putting extra weight on the left side. At this time she was working full duty and would occasionally feel something in her knee while moving a patient. There was a time when she had to pause while pushing a bariatric stretcher because she felt something in her knee. On March 13 Dr. Handling gave her another injection in her knee. Claimant testified that she still has occasional issues with the knee. As of the date of the hearing she is aware that her knee is different. There is not any pain but she feels something. She admitted that it is not a horrible situation.

Claimant admitted that she did have a prior right knee pain. She does not recall the exact date. When she was 16 she did have a sports injury to her right knee while playing softball in high school and college. In 2011 she had an injection with Dr. Pfaff. Dr. Pfaff told her she should also lose weight which she did, losing 25 pounds. Claimant felt that was helpful. Her primary care physician Dr. Roberts had referred her to Dr. Pfaff. She also had an MRI at that time. Claimant has not had any knee problems since that time. She does not recall having any treatment for her knee in 2013. In 2012 she had one injection but other than that no treatment until 2016. Claimant also denied having any other accidents since 2016. She did note that she felt a popping sensation while moving a bariatric patient in March 2017. Claimant testified that on October 19 she saw her primary care physician for an unrelated eye issue. She showed up on crutches but her doctor did not examine the right knee. Claimant had no problems with her right knee and performing her work duties prior to this incident. Now she occasionally feels that something is not right about the knee. Claimant testified that on her last shift she moved 11 patients. She also noted she has a high tolerance to pain and does not take medication

On cross examination Claimant testified that the amount of patients she moves varies depending on her shift. They have been busier lately but she feels that she can handle it. Claimant demonstrated how the incident occurred. She stood next to the witness table and placed her right thigh against the table which represented the bumper of the ambulance. She indicated how she lifted up the side of the stretcher a little bit to get it into the ambulance as Gary was guiding it from behind.. Claimant admitted to not listing the 2011 knee treatment on her initial application for benefits or statement of facts. Claimant did not consider moving a large patient a new incident just a continuation of the pressure on her knee from October. Claimant was not sure if her knee had given out prior to the accident but conceded it may have in 2011. Although the

January 20 note Dr. Handling indicated that the knee was feeling great and Claimant was not wearing her brace. There was nothing in the note about Claimant not wearing the brace because it did not fit properly. At the last visit Dr. Handling gave her the new prescription to get a different brace. She does not dispute that Dr. Handling put in his record that she was not having any pain. She denied having any pain but indicated that the knee was bothering her.

Claimant noted that she was 50 years old and has had other issues with aches and pains and work accidents. Claimant did not have any idea why Dr. Roberts noted on the October 19 visit normal range of motion and normal examination of the knee because Dr. Roberts did not examine her knee. Claimant was also using crutches at that visit. Claimant testified that she works 36 hours in two shifts, one of 12 hours and one of 24 hours. The short shift is Tuesdays 4 AM to 4 PM and Thursdays is the long shift 4 AM to 4 PM. Claimant did admit that most of the time she is sitting in the vehicle in between patient runs. While she is sitting she moves her leg around and stretches it out. She also can do home exercises. If she is feeling pain she can take Motrin. Claimant believes the lifting requirement for her job as 100 pounds. She confirmed that the stretcher bottom scissors up and down when you lift it and then the wheels collapse towards the stretcher. The wheels in front were not quite into the bed of the truck. There is a bar on the stretcher which must meet up with a hook in the ambulance before they can push it in. Claimant was asked to further clarify how she was doing currently. She indicated that she was aware of the knee and when she was resting she might feel a bit of pressure on it. Initially the knee was locking and giving out however she has not had any locking or giving out since that time. During activity sometimes she could describe the sensation as feeling a twinge.

Dr. Andrew Gelman, a board certified orthopedic surgeon, testified by deposition on behalf of Employer. He examined Claimant on two occasions, November 8, 2016 and

February 8, 2017. Dr. Gelman noted that his first examination was for treatment purposes and the second evaluation was a defense evaluation. He did confirm that he reviewed a number of Claimant's medical records in conjunction with his evaluation. Some of the records he had subsequent to his evaluations and he did provide an addendum report dated February 10, 2017. He also reviewed Dr. Handling's deposition transcript.

At the first examination on November 8, 2016 Claimant had symptoms of right knee pain. Claimant informed Dr. Gelman that she felt her knee pop but wasn't quite sure what she did or if she twisted or banged it. Dr. Gelman at that point presented recommendations for treatment. Even at the second evaluation Claimant was not sure as to the actual mechanism of injury regarding her right knee. Dr. Gelman confirmed that Claimant does have underlying degenerative disease in her knee. Claimant did tell him that she was lifting a pediatric device, an isolette, that she used as part of her job duties when this occurred. She did not report any falls or slips or trips. Dr. Gelman following the initial evaluation concluded that Claimant had a strain or sprain of her right knee and exacerbated some of the underlying degenerative disease. On November 8 Claimant had a small effusion or fluid on the knee and he noted it that it exhibited capsular thickening which is a chronic enlargement. Dr. Gelman was able to provoke pain or discomfort with palpation of the front of her knee. She also had pain over the medial joint line. She had tightness in her quadriceps and hamstring muscles and he noted a slight limp favoring the right side. Dr. Gelman noted that his physical examination on February 8, 2017 was similar. He noted that both the right and left knees exhibited the capsular thickening consistent with bilateral degenerative disease. He noted that both knees had some limitations in range of motion. Claimant exhibited some patellofemoral discomfort with palpation. Dr. Gelman agreed that Claimant's gait was normal at the February evaluation. Dr. Gelman concluded in February that

Claimant had no active right knee problems. This meant that Dr. Gelman felt that she was not symptomatic with respect to the October 11, 2016 event. Claimant herself informed Dr. Gelman that she was not having any problems with her right knee. Dr. Gelman also noted that the visit on November 8, 2016 was on referral through Omega Medical Center.

Dr. Gelman was able to review records of treatment Claimant had prior to the incident. There were records regarding complaints of severe right knee pain in 2011. She told Dr. Roberts at that time that her knee would occasionally give out when walking up steps. At that time Claimant had creaking and crepitus in her right knee. She continued to treat with Dr. Roberts in January 2012 for severe right knee pain. Claimant was referred to an orthopedist, Dr. Pfaff. Claimant also had an MRI done of the right knee at that time which showed a ganglion cyst in the tibial region along with a full thickness articular surface defect in the medial femoral condyle. The impression was right knee medial femoral condyle OCD lesion and right patellofemoral syndrome. Claimant followed up with Dr. Pfaff again in February 2012. There was a subsequent follow-up in October 2013 when Claimant was diagnosed with a joint disorder of the right lower leg. An office note from October 19, 2016 noted normal range of motion in the right lower extremity. That was only a week after this accident. Dr. Gelman agreed that this would seem to be inconsistent with a significant knee injury on October 11, 2016. A note from Omega Medical Center on October 20 indicates that Claimant had severe knee pain and was unable to walk. She had a pain level of eight (8/10) prior to that and a pain level of 4/10 on the October 20 note. Dr. Gelman felt that there may be some inconsistency unless, as is common with degenerative disease, she was has good and bad days intermittently. Dr. Gelman agreed that Claimant did admit to having a history of prior arthritis in her knees. Dr. Gelman compared the MRI taken on December 28, 2011 with the MRI of October 20, 2016. He noted there were

similarities, especially with respect to the osteochondral defect. It was already significant back in 2011 and it was noted again in 2016. There was softening and spurring as well. The main difference is a notation of a loose body which is noted in October 2016.

Dr. Gelman explained this loose body in terms of a pothole. As a blacktop wears away small cracks appear which become small potholes and then often large potholes. Claimant has what would be called a large potholes her right knee dating back to 2011. And what can happen is that like a pothole a small piece of tissue can chip away inside the knee. In Dr. Gelman's opinion this loose body or the presence of a loose body cannot be dated to a specific event. Given the findings in 2011 Dr. Gelman noted that it was more likely than not that this was there before the incident. Dr. Gelman also felt that a lifting incident but in and of itself would not be a sufficient mechanism to cause a loose body to fragment. He felt there would have to be some sort of trauma like a fall, bump or twist to make this symptomatic. Simply lifting a weight isn't going to affect the right knee that much. Dr. Gelman confirmed that in his opinion the symptoms from the October 2016 lifting incident have resolved. He characterized the situation as a brief exacerbation of the underlying disease process. He felt that by his February 8, 2017 evaluation Claimant had returned to baseline and noted that she was asymptomatic at that point. His conclusion was that whatever happened in October 2016 resolved without any residuals. Dr. Gelman confirmed that Claimant did not begin treating with Dr. Handling until approximately 2 months after the incident. Reviewing the Claimant's initial visit with Dr. Handling in December 2016 Dr. Gelman noted that he reviewed the historical documentation and noted that Dr. Handling's impressions were similar to his own. He indicated by Dr. Handling's next evaluation in January Claimant was no longer having any problems the right knee.

Dr. Gelman confirmed that Claimant informed Dr. Handling at the December 2 visit that she had no issues with her right knee for the past 10 years. Dr. Gelman noted that the history and records that Dr. Handling had to review was incomplete and inaccurate. Dr. Gelman noted that Claimant's family physician, Dr. Roberts, carried the right knee is an active problem in her notes through 2015 and 16. Dr. Gelman agreed that Claimant informed Dr. Handling on January 20, 2017 that her knee felt great and she was not taking medications or wearing a brace. Dr. Gelman confirmed that at that time Claimant had a normal range of motion. Dr. Handling also returned Claimant to work on that date. Dr. Gelman agreed that diagnosis was similar in that she may have had a strain or sprain of the right knee with an exacerbation of underlying degenerative disease with resolution back to baseline by January 2017. Dr. Gelman reviewed Dr. Handling's March 13, 2017 note. There was essentially a normal exam with a small effusion or swelling in the knee. There was tenderness as well. He treated her with an injection and assessed a knee sprain as well as alluding to the presence of the loose body. Dr. Gelman interpreted this note and treatment as a flare up of the degenerative condition which was similar to what was treated in 2012. In Dr. Gelman's opinion this was a distinct flare up unrelated to the incident of October 2016.

On cross examination Dr. Gelman confirmed that Dr. Roberts is Claimant's family doctor. Dr. Gelman noted that the references to knee pain between 2012 and 2016 occur in the problem list which also includes past medical problems. Dr. Gelman indicated that right knee pain being in the problem list indicates a diagnosis that, while Claimant may not be actively treating for, is still an issue. Dr. Gelman reviewed a number of Dr. Roberts notes from 2012 where the right knee was not listed in the problem list. The May 11, 2012 note for example also lists under the review of systems the absence of joint pain. A number of other notes in 2012 also

make reference to the knee in this way. The knee was not specifically identified and joint pain was either identified as being present or not present. The problem list also continues with a slash followed by past medical. This listing continued for a number of the notes in 2013 as well. The note of October 7, 2013 indicates that there was back pain and right knee pain. It also noted that Claimant had been seen in the emergency room and given medication including narcotic medication. The note indicates under review of systems that joint pain and swelling of the extremities was not present. The note reflects normal range of motion without pain in the right lower extremity. The August 7, 2015 note does indicate knee pain in the problem list but again with an absence of joint pain and swelling and with normal range of motion. The same is true of the August 12, 2015 note. Dr. Gelman indicated that these were templated electronic medical records and in many of these cases the right knee was probably not examined. For example on December 1, 2015 Claimant presented with painful urination and Dr. Gelman agreed that Dr. Roberts probably did not perform a range of motion test on the right lower extremity on that date.

On June 27, 2016 Claimant presented to Dr. Rodgers with complaints of dizziness. Dr. Gelman agreed that once again under the problem list/past medical indicated knee pain. Dr. Gelman agreed that didn't knee was probably not examined at that visit and it was again a templated medical record. It does state normal range of motion without pain for the right lower extremity. Dr. Gelman testified that while Dr. Roberts notes reflect right knee pain as part of Claimant's medical history it does not appear that Dr. Roberts was managing that right knee pain on those occasions. Dr. Gelman was not aware of active treatment between 2015 or 2013 and October 2016. Dr. Gelman then reviewed the record from Dr. Roberts dated October 19, 2016. He noted that the primary area of focus at that time was a lesion on the face. Dr. Gelman noted

that he did not think the right knee was examined on that date and it was not the issue for that visit. Had the knee been somewhat of an issue Dr. Gelman felt that she would have commented on it. Dr. Gelman agreed that Claimant was already being seen by other providers for the right knee as well.

Dr. Gelman agreed that a loose body in the knee can cause pain. Dr. Gelman noted that depending on the activity there may be some alteration of activities necessary. Some loose bodies can be embedded in the internal lining and are not an issue. If the loose body is actively moving and catching in one of the compartments of the knee it could affect activities of daily living. He agreed that the MRI indicates the presence of a small cartilage flap in the patella, something which was well-documented for years. Dr. Gelman did not believe that the sub articular lesion was the pain generator either, because that finding had been present since 2011. Dr. Gelman believed the knee did not suffer any structural trauma in the lifting incident. Dr. Gelman said that the loose body could have been missed in the prior studies as well. He agreed that the previous reports do not mention a loose body. He indicated that it depends on the MRI; larger loose bodies would be more easily seen than small ones. The exam findings did reference crepitus and other sounds that would suggest cartilage softening or a loose body. Dr. Gelman conceded that no records prior to October 11, 2016 specifically indicated the presence of the loose body. Dr. Gelman felt that the loose body visible on the MRI was caused by the gradual degeneration in the knee that had been present since at least December 2011and in his opinion the loose body predates the October 20, 2016 incident. Loose bodies don't occur in the nine days from date of the accident to the date of the MRI scan. He does not believe it is an acute finding and he differs with Dr. Handling on that issue. Dr. Gelman did indicate that a loose body can break off from an acute traumatic event such as a scuffing of the joint which was not present in

this case. Dr. Gelman's description of a pothole with cracks and pieces breaking off the edge is a different scenario from an acute fall or twist incident. He believes the same about the flap of cartilage that was seen on the scan. Dr. Pfaff had discussed a patellofemoral issue previously. Dr. Gelman conceded that Dr. Pfaff did not use the term cartilage flap in any way.

Dr. Gelman did not believe that the simple lifting event could aggravate the osteoarthritis because it was more of an upper extremity activity. He noted that it could have some influence depending on whether you are bending your knees to pick something up from floor level. There may be an exacerbation of the underlying disease. Dr. Gelman also indicated that Claimant's obesity may have a stress affect type influence on the osteoarthritis. Dr. Gelman commented on Dr. Handling's opinion that there is a possibility the loose body may catch and become symptomatic in the future. He noted that with degenerative disease and a large osteochondral defect that has been symptomatic over a number of years will require treatment in the future. Dr. Gelman agreed that Claimant was at risk for periodic flare ups and she has had periodic flare ups requiring treatment going back to 2011. Dr. Gelman would explain to a patient like this that they could expect good days and bad days and the disease would likely progress. The note from Dr. Handling or his assistant in March 2017 indicates that Claimant reported increasing pain becoming more constant. Dr. Gelman did not argue with Dr. Handling when he assessed that Claimant was at risk of having pain in the future. He noted that it was another manifestation of the degenerative disease in her right knee. It is not Dr. Gelman's opinion that the loose body has resolved and he indicated that Claimant probably has multiple smaller loose bodies in her knee. Judging from the note in March it doesn't appear that the loose body is the pain generator. Dr. Handling did not record any locking that would indicate the loose body was producing symptoms. He agreed that at times it may be problematic although it did not appear to be so in

March. Dr. Gelman agreed that the cartilage flap has not resolved and noted that Claimant had multiple cartilage defects in her right knee dating back to 2011. Dr. Gelman confirmed that Claimant did not tell him that there was any bending associated with the lifting incident that she had in October 2016. Dr. Gelman further explained what he meant by an acute scuffing event causing a loose body. He noted that a loose body can present itself on x-rays or MRI with a traumatic event such as some sort of blunt trauma or rapid twisting injury to the knee. He concluded from the mechanism of injury and his causation analysis, including the history where Dr. Pfaff discussed surgery back in 2012, that the loose body was chronic and consistent with the degenerative process. With respect to Dr. Roberts medical records of October 19 Dr. Gelman would've expected Claimant to come in and complain of the right knee given how bad it was in the record of just several days prior to that visit. He would've expected something to have been documented by Dr. Roberts. Dr. Gelman agreed that the literature supports that obese people are more predisposed to knee pain and knee arthritis. Dr. Gelman confirmed that he did not attribute any future periodic treatment of the right knee to the October 11, 2016 incident. He agreed that Claimant may in the future require treatment attributable to the arthritis in her knee but that it would have no bearing on the October 11, 2016 incident. This was the case with the pain and presentation in March 2017.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Causation

The Delaware Workers' Compensation 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. If there has been an accident, the injury is

compensable if "the injury would not have occurred but for the accident. The accident need not be the sole cause or even a substantial cause of the injury. If the accident provides the 'setting' or 'trigger,' causation is satisfied for purposes of compensability." *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992). "A preexisting disease or infirmity, whether overt or latent, does not disqualify a claim for workers' compensation if the employment aggravated, accelerated, or in combination with the infirmity produced the disability." *Reese*, 619 A.2d at 910. *See also State v. Steen*, Del. Supr., 719 A.2d 930, 932 (1998)("[W]hen there is an identifiable industrial accident, the compensability of any resultant injury must be determined *exclusively* by an application of the 'but for' standard of proximate cause.")(Emphasis in original); *Page v. Hercules, Inc.*, Del. Supr., 637 A.2d 29, 33 (1994). 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*, Del. Super., C.A. No. 97A-03-005, Terry, J., 1997 WL 817889 at *2 (October 30, 1997), *aff'd*, 706 A.2d 26 (Del. 1998).

In this case, there were two issues presented to the Board, whether Claimant sustained a compensable right knee injury on October 11, 2016 and whether that injury has now resolved. Following a review of all the evidence presented in this case the Board finds the answer is yes on both counts. Claimant has sustained her burden to show that she sustained a compensable right knee injury and incurred medical treatment expenses as well as missed time from work as a result. The Board also finds that Claimant's injury consisting of a knee sprain and aggravation of her arthritis, resolved or returned to baseline by January 2017. The Board relies on Dr. Gelman's opinion in this matter and finds it to be more persuasive and reliable than that of Dr. Handling. *DiSabatino v. Wortman*, Del., 453 A.2d 102,106 (1988)(as long as substantial evidence is found

the Board may rely one expert over another). Claimant clearly had substantial findings of arthritis in her knee prior to the incident. Further Claimant did not have the type of injury which would lead to major structural damage or a severe worsening of the arthritic condition. Dr. Gelman noted that the mechanism of injury was not what one would expect for such findings. In fact both doctors' agree that the accident aggravated Claimant's pre-existing arthritis. The difference of opinion lies with the extent of that aggravation and whether there are any lingering effects of that aggravation. Dr. Handling's opinion on this count rests with the loose body finding, which he attributes directly to the trauma. He also believes that this loose body will inevitably cause symptoms again and possibly the need for a surgical procedure. The Board believes that his opinion in this regard is somewhat speculative. In any event the Board will rely on Dr. Gelman's opinion that this loose body was likely present prior to the accident and it is related to degeneration of the cartilage in Claimant's knee. Further the Board notes that Dr. Handling did not have access to the prior medical records and was under the impression that Claimant had not had problems for ten years, when according to the records she did have right knee issues requiring treatment four years ago. Dr. Handler did also concede that Claimant would be subject to flare ups due to the arthritis without regard to the accident.

Claimant's own testimony establishes the nature of the injury and recovery. Claimant's symptoms improved rapidly with treatment so that by the January visit with Dr. Handler she had no complaints and the knee was feeling great. Further Claimant's testimony regarding her current complaints was vague and tended to support the argument the flare up caused by the accident in October had resolved. Claimant could not really provide the Board with any substantial testimony of ongoing problems. She simply had a feeling that the knee was not right and at times might feel a twitch. This testimony is not so much supportive of an ongoing injury and could just

as well be related to the arthritis. The bottom line is that Claimant has arthritis in her knees and works in physically active job such that flare ups may occur that are unrelated to this accident. Consequently the Board finds that the aggravation that Claimant suffered as a result of the lifting incident has resolved.

For the aforementioned reasons, the Board finds that Claimant sustained an injury to her right knee in the October 11, 2016 work accident. The Board finds that this injury resolved as of the January 20, 2017 visit with Dr. Handler. Claimant's Petition to Determine Compensation Due is hereby **Granted**.

Attorney's Fee & Medical Witness Fee

A claimant who is awarded compensation is entitled to payment of a reasonable attorney's fee "in an amount not to exceed thirty percent of the award or ten times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award, whichever is smaller." 19 *Del.C.*, § 2320(10)(a). However, attorney's fees are not awarded if, thirty days prior to the hearing date, the employer gives a written settlement offer to the claimant that is "equal to or greater than the amount ultimately awarded by the Board." 19 *Del.C.*, § 2320(10)(b). A settlement offer conceding to a right knee injury with payment of medical expenses through January 20, 2017 as well as the stipulated periods of total and partial disability was tendered by Employer. That offer equaled or exceeded the Board's award of benefits. Accordingly, an award of attorney's fees is not appropriate in this case.

Medical witness fees for testimony on behalf of Claimant are also awarded, in accordance with title 19, section 2322(e) of the Delaware Code.

STATEMENT OF THE DETERMINATION

Based on the foregoing, the Board hereby **GRANTS** Claimant's Petition to Determine Compensation Due and finds that Claimant had a compensable industrial accident on October 11, 2016 and sustained a right knee injury that aggravated her preexisting arthritis. Claimant is awarded the periods of total and partial disability as stipulated to by the parties, to be paid at the stipulated rate. Medical expenses for treatment to the right knee are awarded through January 20, 2017. Medical expenses are to be paid in accordance with the fee schedule set forth in section 2322B(3) of the Delaware Code. Claimant is further awarded reimbursement of her medical witness fees.

IT IS SO ORDERED THIS 5th DAY OF MAY, 2017.

INDUSTRIAL ACCIDENT BOARD

Marilyn J. Goto for Gemma Buckley
GEMMA BUCKLEY

Robert J. Mitchell
ROBERT MITCHELL

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

Mailed Date: 5/9/17

OAWC Staff