

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

JEFFREY GATTA,)
)
 Employee,)
)
 v.) Hearing No. 1485169
)
 RIGHTECH, INC.,)
)
 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 March 9, 2020, in the Hearing Room of the Board, New Castle County, Delaware. Pursuant to Del. Code Ann. tit. 19, § 2348(k), the Board required an extension of time to complete the decision.

PRESENT:

PETER W. HARTRANFT

ROBERT MITCHELL

Joan Schneikart, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Edward J. Fornias, Attorney for the Employee

Joseph Andrews, Attorney for the Employer

NATURE AND STAGE OF THE PROCEEDINGS

On May 10, 2019, Jeffrey Gatta (“Claimant”) filed a Petition to Determine Compensation Due alleging he sustained a work accident on April 18, 2019, causing injuries to the right hip, right knee and low back, while employed as a cable technician for Rightech, Inc. (“Rightech” or “Employer”). Claimant seeks total disability benefits and medical expenses. The Employer disputes the compensability of any work accident.

The parties submitted a joint Stipulation of Facts, pursuant to *Rules of the Industrial Accident Board of the State of Delaware* (“I.A.B. Rules”) Rule 14(A).

SUMMARY OF THE EVIDENCE

Claimant, age fifty-nine, testified he has worked at as a cable puller for 20 years. On April 18, 2019, he was running network lines for Rightech, a temporary agency, where he had been employed for about six weeks. His job duties required overhead work and kneeling. On April 18, 2019, he was assigned to organize and clean up ladders, cable and tools in a staging area at a job located in Delaware. While performing those duties, Claimant fell into a square opening, measuring 2 by 2 or 3 by 3 feet across, in a concrete floor. His right foot went down past his ankle and he fell onto his right side. He hit his head, helmet and right side. He yelled for help, but the construction site was noisy. He got himself up and had pain in the right knee, right hip, and right lumbar spine. Claimant then reported the fall to his foreman, Brian Chapman, who told him to report to the construction trailer and file a report with the supervisor. Claimant also took Mr. Chapman to show him the hole where he fell. Claimant then left for home, where he took ibuprofen and first iced his knee, hip and back, and then applied heat. He experienced pain, swelling and bruising.

Claimant reported to work the next day, on Friday, but was in pain and pushed himself because he needed the job. Over the week-end, he continued to be sore and tried to tough it out. Claimant reported back to work on Monday while continuing to experience pain. However, he took it easy and paced himself. Claimant then visited Med Express for treatment on Monday, April 29, eleven days after the work accident, as a lump appeared on the inside of his right knee.

At Med Express, Claimant described prior wrist, hand and knee surgery in the past. He was sent for x-rays and an MRI, which showed a torn meniscus and a cyst of the right knee. Claimant underwent surgery for both knee problems and followed up with physical therapy. He is happy with the result and is “doing OK.” Claimant returned to work for a different employer in February 2020.

Claimant confirmed that he had no knee, hip or back problems, or work restrictions before the April 18, 2019 work accident.

On cross examination, Claimant was shown copies of Rightech timecards for work weeks ending on March 17, March 24, March 31, April 7, April 14, April 21 and April 28, 2019 (Employer’s Exhibit No. 1). While Claimant admitted he previously signed them, he could not confirm the veracity of the documents as he did not have his reading glasses with him at the hearing. He confirmed he left work early on Thursday, April 18, 2019, following the work accident, although he was paid for a full eight hours. On April 29, Claimant called Mr. Chapman and told him he would not be in to work but gave no reason. On that date, he went to MedExpress for treatment of his knee issues.

On April 18, 2019, Claimant was working on the ground floor, along with the rest of the crew. He had a meeting to get a new assignment that day which was to organize and clean

up a staging area. He was performing those duties when he fell into the hole. He later developed a lump on the inside of the right knee.

On questioning from the Board, Claimant reported when he told Mr. Chapman about the fall while cleaning up, Mr. Chapman balked at reporting it. Both of them then waited 15 minutes for the supervisor, Wes, to arrive, Claimant was “shook up” and left work 45 minutes early on April 18.

Claimant identified the hole in the floor that caused him to fall in a photo (Deposition Exhibit No. 1 to Claimant's Exhibit No. 1). He was moving sideways and forward when his right foot went down and he braced himself falling onto his right side. The floor opening was about 2 to 3 feet square and about 5 to 6 inches deep. He hit his right knee, right hip, right leg, upper body and head, although he was wearing a helmet. He struck his low back and head outside the actual opening after falling onto the concrete. While he struck his right knee when he fell, the lump popped up later.

Bruce Grossinger, M.D., a neurologist, EMG and pain management specialist, testified by deposition on behalf of Claimant. The doctor began providing treatment to Claimant on May 17, 2019, and last saw him on October 21, 2019. He has also reviewed Claimant's medical records. Dr. Grossinger opined that following the April 2019 work accident, Claimant developed trochanteric bursitis, gluteus medius syndrome, and an aggravation of asymptomatic degenerative joint disease of the right hip; an acute traumatic tear of the medial meniscus and an aggravation of a cystic lesion in the right knee; and lumbar facet syndrome and lumbar somatic dysfunction. The doctor concluded all the medical treatment Claimant has received to date has been reasonable, necessary and causally related to the April 2019 work accident. As Claimant was restricted from all work by MedExpress on April 29, 2019,

Dr. Grossinger continued his total disability status ongoing through his last visit on October 21, 2019.

At the first visit, Dr. Grossinger performed a needle EMG and nerve conduction study of Claimant's lower extremities. The results were normal despite the fact that Claimant had radicular symptoms beginning in his back and radiating through his hip, knee, and foot.

Dr. Grossinger noted the MedExpress records dated April 29, 2019, reflected Claimant's report of going through a doorway and falling into a square hole in a cement floor that was not marked with a cone or rope. He fell onto his right hip but had been going to work since then trying to perform his job. However, three days before his visit to MedExpress, he had developed a lump on the inside of his right knee, which was not there at the time of the fall. The physical examination there reflected tenderness to palpation on the right greater trochanter and right anterior hip, along with the lump adjacent to the right knee. An x-ray of the hip showed degenerative changes. MedExpress restricted Claimant from all work with a return date of May 14, 2019.

Upon physical examination, Dr. Grossinger noticed edema or swelling that was indicative of an acute injury of the right knee. The doctor ordered an MRI, which showed a tear to the medial meniscus for which Dr. Trevlyn later performed an arthroscopic repair. The doctor also opined that Claimant likely developed an aggravation of asymptomatic degenerative joint disease of the right hip based on the April 2019 x-ray, along with trochanteric bursitis and gluteus medias syndrome.

At the May 31, 2019 office visit, Dr. Grossinger diagnosed Claimant with lumbar facet syndrome and myofascial pain as well as a medial meniscus tear of the right knee. He

related those diagnoses to the April 2019 work accident. The doctor also found a ganglion cyst, which is etiologically non-specific, that was aspirated.

Dr. Grossinger also administered a platelet rich plasma (“PRP”) injection to the right knee on June 20, 2019, from which Claimant had a 30% benefit.

In reviewing Dr. Trevlyn’s records from August 20, 2019, Dr. Grossinger noted they reflected Claimant report of falling in a ditch and twisting his knee. He tried to work through it and when the pain and swelling increased he saw Dr. Trevlyn for surgery. Dr. Grossinger also reviewed the records of Dr. Tim Martin, a chiropractor, in which Claimant reported losing his footing after falling in a hole and landing on his right side.

In viewing a photograph of the hole in which Claimant fell, Dr. Grossinger opined that Claimant's injuries could have resulted from the type of mechanism of injury Claimant described.

Dr. Grossinger also reviewed some of Claimant's medical records before the work accident. In January 2018, Claimant saw Dr. Broyles for a wrist fracture after falling off a ladder. A December 2018 physical exam showed no medical findings referable to prior injuries to the low back, knee or hip.

Dr. Grossinger disagrees with Dr. Piccioni’s opinion that because the EMG was normal and did not show a radiculopathy the study was unreasonable, as Claimant had clear radicular problems. A normal test does not mean that the reasonability of the exam should be in question. Also, Dr. Piccioni embraced the necessity of the knee surgery.

Brian Chatman, a lead foreman for Rightech, testified on the Employer’s behalf. On April 18, 2019, he was working at the Comcast renovation site in Delaware supervising six to ten workers, including Claimant who was assigned to go into a staging area and clean up.

Once Claimant notified him of the alleged work accident, Mr. Chatman took a photograph within one-half hour of the location where Claimant fell (Deposition Exhibit No. 1 to Claimant's Exhibit No. 1). Claimant reported he fell and hurt his wrist and was "shook up. He did not report any complaints about his right knee, right hip, or lumbar spine.

Claimant had worked for Rightech six months, but Mr. Chatman believed he also had a separate job with a tree service on the side. Once Claimant reported the work accident, Mr. Chatman needed to "run it up the chain" to the sub-contractor. He took Claimant outside to talk with "Wes," the direct project manager sub-contractor, who offered to take Claimant to MedExpress, which he declined. Mr. Chatman observed Claimant was "extremely shook up" and he left for the day. Claimant returned to the job on Friday, the next day, and worked full duty. He also worked full duty for the next week. He also mentioned to Mr. Chatman doing a side job over the intervening week-end. However, Claimant did not show up for work on Monday, April 29. He notified Mr. Chatman by text that he was "not feeling well" but did not indicate his problem had anything to do with his job. Mr. Chatman then lost contact with him.

On cross examination, Mr. Chatman agreed that Claimant had worked for Rightech for six weeks before the alleged work accident and had done a satisfactory job. The hole that Claimant fell into was in a bathroom under construction and measured about 2 feet by 2 feet wide and about "ankle deep" that was filled with rocks and debris.

Mr. Chatman agreed he had no separate knowledge or evidence of Claimant performing any side work during the week-end of April 20-21 following the alleged fall, other than Claimant telling him he had picked up some work that week-end. After the fall,

Claimant seemed very upset and nervous. He later told Mr. Chatman not to file a claim because he was fine.

Lawrence Piccioni, M.D., an orthopedic surgeon, testified by deposition on behalf of Rightech. He evaluated Claimant on August 15, 2019, and reviewed his medical records along with the deposition testimony of Dr. Grossinger. Dr. Piccioni opined the ganglion cyst of the right knee and subsequent surgery was not related to the work accident. Based on the medical history and objective examination, the defense doctor opined that Claimant did not develop any low back or right trochanter or hip injuries as a result of the work accident. As Claimant had undergone meniscal surgery two weeks before the defense medical examination, Dr. Piccioni could not make any objective findings concerning the tear of the right knee before the surgery. However, based on the medical history, he concluded it was unrelated to the work accident.

At the defense medical examination, Claimant described a 3 by 3-foot hole, approximately six to eight inches deep, which he did not see and stepped into, twisting his right leg and landing on his right side. He was wearing long pants which prevented any cuts but did have some bruising afterwards. Claimant reported he did not have any specific problems related to his hip, knee and back before the 2019 fall at work.

In reviewing the medical records, Dr. Piccioni noted Claimant there was a remote history of previous knee surgery on both knees and a previous back problem but he was not under any active care at the time of the alleged April 2019 injury. In January 2017, at the Rothman Institute, Claimant complained of left buttock and hip pain as well as low back pain and was on disability. He had undergone bilateral knee surgeries from torn menisci in both knees back in March 2007. He also reported to Dr. Broyles in March 2017 having a “fall last

autumn,” and was evaluated at the Rothman Institute for sciatica pain. In June 2017, Claimant reported to Dr. Broyles about pain complaints in his back and bilateral knees. Dr. Broyles’ records from January 2018 reflected that Claimant occasionally worked as a grounds man with a tree surgeon. Records from the Rothman Institute in February 2018 reflect complaints of right knee pain and intermittent sciatic discomfort related to tree removal work for which he was injected with Kenalog in the right knee.

At the August 2019 defense medical examination, Claimant was two weeks following right knee surgery, so the defense doctor could not make any objective findings about what his knee was like before the surgery. However, as to the lumbar spine and right hip, there were no objective findings, which was inconsistent with Claimant's subjective presentation.

Medical records following the work accident reflect that Claimant went to MedExpress on April 29, 2019, which was eleven days postinjury. There he described falling into a square hole in a cement floor that was unmarked. He fell on the right hip and developed pain, and since then attempted to do his job. But on or about April 26, he developed a lump on the inside of his right knee, which was not there at the time of the fall. The records concluded the lump was a ganglion cyst on the anterior aspect of the knee for which Claimant later underwent surgery.

Dr. Piccioni opined that if the lump were to have originated from the work accident, it would have occurred within 48 hours of the event, especially given Dr. Grossinger’s records. Dr. Piccioni equivocated that the cyst may be bursitis or a meniscal tear occurring sometime between April 18 and April 26, 2019. However, if it had developed from the work accident, there would have been a lump in 48 hours. As the surgical diagnosis was for a ganglion cyst on the anterior aspect, the defense doctor believes it would have more likely occurred on the

basis of chronic kneeling, rather than from any traumatic injury to the knee itself. In short, the cyst is not related to the April 2019 work accident.

Dr. Piccioni also disagreed with some of the medical conclusions reached by Dr. Grossinger about the trochanter and the hip, based on the finding of “subjective” tenderness of the right hip. The defense doctor also found Dr. Grossinger’s diagnosis for lumbar facet syndrome and myofascial pain unsupported by any x-ray or MRI of the lumbar spine since the work accident. Dr. Piccioni further disagreed with Dr. Grossinger’s treatment including a platelet-rich plasma injection for an acute meniscal tear on the basis that it was not medically indicated.

Dr. Piccioni opined that Claimant may have sustained a lumbar strain as a result of the work accident, but there was no contemporaneous x-ray or MRI performed to confirm such a diagnosis. The EMG of the lower extremities performed by Dr. Grossinger in mid-May 2019 would not be the test of choice to diagnose such a problem and was not reasonable or necessary. In addition, the right knee complaints could have been symptoms of sciatic pain.

Dr. Piccioni believes there was also a gap in time between the work accident and when Claimant sought treatment at MedExpress. The defense doctor believes the most painful period would have been the first 24 to 48 hours for a back injury. Dr. Piccioni opined Claimant likely had intermittent symptoms from previous sciatic pain that had nothing to do with the work accident. He may have had a temporary flare-up, but by the time of the defense medical examination the back was normal.

Finally, Dr. Piccioni noted that records from the Garnet Valley Sport & Spine on October 18, 2019, reflect Claimant was returning to work for a full-duty job, but when he sees Dr. Grossinger on October 21, 2019, three days later, Claimant reported he was still out of

work but looking. This discrepancy gave the defense doctor reason to question Claimant's credibility.

On cross-examination, Dr. Piccioni agreed the history of the work accident as reflected in the various medical records is consistent. The defense doctor's opinion is he "could not specifically state one way or the other" within a reasonable medical probability whether Claimant sustained an injury to the low back and greater trochanter. However, he did opine that Claimant did not have any knee injury from the work accident.

Dr. Piccioni agreed that a December 2018 annual physical from Dr. Broyles at Family Physicians in Middletown, five months before the work accident, does not mention any low back or knee problems. A later record indicated Claimant was walking two miles a day.

The defense doctor agreed that he provides no opinion about ganglion cysts in his report. However, he later read the August 2, 2019 operative report in February 2019 but issued no addendum report, as he was not requested to do so.

The defense doctor agreed the x-rays from MedExpress noted "right knee degenerative changes, good joint space, no fracture, edema in the medial soft tissue." He only reviewed the report of the x-rays. While edema can be acute, in Claimant's case, it was not an edema but a ganglion cyst. In the defense doctor's opinion, he did not have edema.

Dr. Piccioni agreed his report did not find Claimant to be a malingerer and Waddell's testing provided negative. However, as the defense doctor did not examine Claimant before his surgery by Dr. Trevlyn, he cannot state within a reasonable medical probability if it was necessary. He agreed the film of the MRI showed a tear of the medial meniscus that was confirmed at the time of the arthroscopy.

On redirect examination, Dr. Piccioni concluded the medical history supports Claimant worked in a medium duty job for six and one-half days following the work accident which is historically inconsistent with his subsequent report of low back and trochanter pain resulting from the work accident. The MedExpress examination from April 26, 2019, some eleven days later, did not indicate anything objective for a diagnosis of back pain and Claimant subjectively denied back pain. Yet the recorded diagnosis included back pain.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On his Petition to Determine Compensation Due, Claimant carries the burden of proof and must demonstrate, by a preponderance of the evidence, that “but for” his work activities on April 18, 2019, he would not have developed injuries to the right knee, low back and right trochanter/hip. *See Reese v. Home Budget Center*, 619 A.2d 907 (Del. 1992)(defining the “but for” standard of causation). To that end a claimant must produce expert testimony relating the causation of his or her medical condition to his or her employment. *Anderson v. General Motors Corp.*, 442 A.2d 1359 (Del. 1982). An internal injury is not the type of injury where medical conclusions regarding causation are obvious. *See McCormick Transportation Co v. Barone*, Del. Super., 89 A. 2d 160, 163 (Del. Super. 1952)(holding that where the injury is internal, and thus concealed, medical testimony becomes essential in order to properly determine that an injury in fact has occurred and the extent of such injury). A pre-existing disease or infirmity, whether overt or latent, does not disqualify a claim from workers’ compensation benefits if the employment aggravated, accelerated, or in combination with the infirmity produced the disability. If the injury serves to produce a further injurious result by precipitating or accelerating a previous, dormant condition, a causal connection can be said to

have been established. *Reese* at 910. *See also* 1A Arthur Larson, *Workmen's Compensation Law* §12.21.

An employer does not need to identify a non-work cause of an injury. The burden of proof rests with Claimant. *See Strawbridge & Clothier v. Campbell*, 492 A.2d 853, 854 (Del. 1985); *Alfree v. Johnson Controls, Inc.*, Del. Super., C.A. No. 97A-04-005, Goldstein, J., 1997 WL 718669 at *7 (September 12, 1997).

Based on the evidence, the Board concludes Claimant has failed to meet his burden of proof to support the finding for any compensable right knee, low back or right trochanter or hip injury related to the April 2019 work accident.

The Board did not find Claimant's testimony credible. Various details of his recitation of the events following the alleged work accident are inconsistent. Assuming he did trip and fall into the square opening depicted in the photograph submitted into evidence, Claimant failed to seek immediate medical treatment at MedExpress when it was promptly offered to him on April 18, 2019, by the direct project manager sub-contractor, Wes, who was contacted by Brian Chatman, Claimant's supervisor, within less than one hour of the event. Nevertheless, Claimant testified on direct examination that he developed pain in the right knee, right hip, and right lumbar immediately after the fall. He left work early that day and experienced continued pain, swelling and bruising at home.

However, the Board finds Claimant's refusal to seek any medical treatment for the problems he claims to be illogical. He also testified that he hit his head during the fall while wearing a helmet, which does not strike the Board as physically compatible with his repeated description of falling onto his right side, given the shallow depth of the opening. More importantly, Claimant reported to work at Rightech the next day after the fall, on Friday,

April 19, and worked full duty, according to his supervisor, Mr. Chatman. He also continued to work full duty the following week, without making any complaints to his supervisor. Claimant did not seek any medical treatment until eleven days later, on April 29, 2019, when a lump appeared on the inside of his right knee during the week-end of April 27 to 28. In addition, the MedExpress records from April 29 include no complaints from Claimant about low back pain and there was no objective diagnosis at that time for any back problem.

Moreover, on April 29, Claimant simply notified Mr. Chatman by text message that he was “not feeling well” but without indicating his problem had anything to do with his job. According to his supervisor, Claimant then stopped contacting him. He had been hired for a temporary assignment but never returned to work at Rightech. However, Claimant testified he did return to work for a different employer in February 2020.

Although the work event was unwitnessed, Mr. Chatman agreed that Claimant appeared “shook up” following the alleged fall at work. However, he further testified that the floor opening was only “ankle deep” and that Claimant later told him not to file any claim as he was fine.

The Board finds the causation opinion of Dr. Piccioni, an orthopedic surgeon, to be more convincing in this case than the opinion of Dr. Grossinger, a neurologist. Dr. Piccioni opined the ganglion cyst of the right knee and subsequent surgery was not related to the work accident. Based on the medical history and the objective defense medical examination, the defense doctor also opined Claimant did not develop any low back or right trochanter or hip injuries as a result of the work accident. Dr. Piccioni could not make any objective clinical findings concerning the tear of the right knee, as he only saw Claimant one time, some two weeks after he underwent meniscal surgery. Nevertheless, based on the contemporaneous

medical history, Dr. Piccioni concluded the meniscal tear and his other alleged injuries were unrelated to the work accident as Claimant would have developed immediate symptoms for the knee, low back or hip within 24 to 48 hours of the work accident.

Dr. Piccioni also noted that medical records on October 18, 2019, from Garnet Valley Sport & Spine, reflect that Claimant was returning to work to a full-duty job. However, three days later, on October 21, 2019, when Dr. Piccioni saw him, Claimant reported he was still out of work.

The Board does not find the causation opinion of Dr. Grossinger to be persuasive in this case. While the doctor did examine Claimant about a month following the work accident, his conclusions as to numerous diagnoses related to the work accident, including trochanteric bursitis, gluteus medias syndrome, aggravation of asymptomatic degenerative joint disease of the right hip, an acute traumatic tear of the medial meniscus, aggravation of a cystic lesion in the right knee, lumbar facet syndrome, and lumbar somatic dysfunction, strikes the Board as overbroad and generic, particularly considering the mechanism of injury alleged. The Board further agrees with Dr. Piccioni that Dr. Grossinger's EMG nerve conduction testing of the lower extremities, which was normal, was not a reasonable or necessary study given Claimant's complaints or even medically supportive of the treating doctor's conclusions. Dr. Grossinger's causal opinions do not adequately consider Claimant's remote medical history that Dr. Piccioni reviewed. Such pre-existing records included: previous knee surgery to both knees in 2007 and back problems with sciatic pain in 2017; along with more recent records from the Rothman Institute in February 2018 for complaints of right knee pain, including a Kenalog injection treatment, and intermittent sciatic discomfort related to tree removal work.

It is within the Board's purview to assess the doctor's credibility and evaluate his testimony in light of the evidence as a whole. *Chrysler Motors Corp. v. Howie*, Del. Super., C.A. No. 95A-03-013, Carpenter, J., 1996 WL 111142 at *2 (January 31, 1996). "Even uncontradicted evidence need not necessarily be accepted as true, where there is evidence or circumstances from which a contrary inference may be drawn." *Whaley v. Shellady, Inc.*, 161 A.2d 422, 424 (Del. 1960). A medical expert's opinion of causality may be rejected by the trier of fact when that opinion is based in large part upon the patient's subjective recital and the trier of facts finds the underlying facts to be different. *Breeding v. Contractors-One-Inc.*, 549 A.2d 1102, 1104 (Del. 1988).

Ultimately, the Board does not find Claimant's own testimony wholly reliable to support the purported work injuries in this case. Claimant's complaints as to a worsening of his condition after his visit on April 29 to MedExpress lack consistency with other circumstances of the alleged work accident. See *Diaz v. Beneficial National Bank*, Del. Super., C.A. No. 97A01-019-RSG, Gebelein, J.(Nov. 6, 1997)(Order and Opinion)(Board is permitted to rely on a claimant's lack of credibility when discounting the testimony of a claimant's physician because the physician's diagnosis and medical opinion are based on the veracity of a claimant's complaints.)

STATEMENT OF THE DETERMINATION

Based on the foregoing, the Board hereby DENIES Claimant's Petition to Determine Compensation Due for a right knee, right hip, or low back injury related to any April 18, 2019 work accident. Since Claimant has not received any award of benefits, he is denied an attorney's fee and a medical witness fee.

IT IS SO ORDERED this 16th day of June 2020.

INDUSTRIAL ACCIDENT BOARD

/s/ PETER W. HARTRANFT

/s/ ROBERT MITCHELL

I hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

Joan Schneikart
Workers' Compensation Hearing Officer

Mailed Date: 6-17-20

OWC Staff

