

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**CARLOS FABELA**

Claimant

v.

AP-00-0458-970

CS-00-0384-052

Docket No. 1,050,357

**EXIDE TECHNOLOGIES**

Respondent

and

**AMERICAN ZURICH INS. CO.**

Insurance Carrier

**ORDER**

Claimant requested review of the Post-Award Medical Award, dated June 30, 2021, issued by Administrative Law Judge (ALJ) Bruce E. Moore. This matter was placed on the summary docket for disposition without oral argument.

**APPEARANCES**

Scott J. Mann appeared for Claimant. Jared T. Hiatt appeared for Respondent and its Insurance Carrier.

**RECORD AND STIPULATIONS**

The Board adopted the parties' Stipulation Admitting Records filed via OSCAR, and considered the record submitted to the ALJ, consisting of the Award issued by ALJ Moore, dated April 25, 2021; the Order issued by the Appeals Board, dated August 4, 2011; the transcript of Proceedings held March 23, 2021; the transcript of Post-Award Hearing by Deposition via Telephone, taken April 23, 2021; the transcript of Deposition of C. Reiff Brown, M.D., taken January 6, 2011, including Exhibits 1-5; the transcript of Evidentiary Deposition of Kenneth Jansson, M.D., taken January 17, 2011, including Exhibits 1-3; the transcript of Evidentiary Deposition of Danny M. Gurba, M.D., taken December 14, 2020, including Exhibit 1; the narrative report of Dr. Gurba, dated September 10, 2020, concerning his Court-ordered independent medical examination; the parties' joint transmittal letter to Dr. Gurba and attached medical records from Advanced Orthopedic Associates, Salina Orthopedics, COMCARE, OHP, Dr. C. Reiff Brown, SRHC PT, Dr. Pedro Murati, Salina Family Healthcare Center, and Arthritis Rheumatology Clinic; and the

pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

### ISSUE

Is Claimant entitled to additional medical treatment under K.S.A. 44-510k?

### FINDINGS OF FACT

Claimant is fifty years old, and worked for Respondent from 1997 to 2003, and 2005 to the present. Claimant's medical history is notable for long-standing, symptomatic rheumatoid arthritis affecting both wrists, knees and elbows. Medical records from COMCARE dated April 10, 1995, indicate Claimant had swelling of the left knee due to rheumatoid arthritis, and he was referred to a rheumatologist for additional treatment. Claimant received treatment for rheumatoid arthritis from the rheumatologist and from his primary care physician, including injections, Prednisone and prescription anti-inflammatory medication. Claimant admitted he experienced swelling in both knees after playing soccer in 2000, and saw health care providers for the swelling. Claimant denied suffering an acute injury while playing soccer.

Claimant works for Respondent assembling batteries, which involves operating nine machines and training new employees on operating the machines. Claimant's work involves standing and walking on a concrete floor, as well as stooping, crouching and kneeling. Claimant works twelve-hour shifts, and normally works three to four days per week. Claimant's work recently increased to five days per week.

On January 20, 2010, Claimant injured his left knee while working for Respondent. Claimant continued working for Respondent and his left knee symptoms worsened. Claimant sought workers compensation benefits in connection with his left knee injury, and he was referred to Dr. Jansson for treatment. Dr. Jansson diagnosed a torn medial meniscus by MRI, degenerative arthritis with a flexion contracture of the left knee, and a history of rheumatoid arthritis. Dr. Jansson performed a medial meniscectomy, synovectomy, and aspiration of a Baker's cyst on July 6, 2010. Dr. Jansson believed the medial meniscus tear was caused by the work-related accident, but he did not believe Claimant's arthritis, synovitis, flexion contracture or Baker's cyst were related to work, and were degenerative. Dr. Jansson addressed the synovitis and Baker's cyst during the surgery because he was already performing surgery in the knee capsule. Dr. Jansson assessed an impairment rating based solely on the meniscus tear. On June 16, 2010, Dr. Jansson told Claimant he would continue to have left knee problems due to his arthritis and flexion contracture. Claimant was released without restrictions on August 16, 2010.

Claimant was evaluated by Dr. Brown at his attorney's request on May 4, 2010, and September 7, 2010. Dr. Brown diagnosed a tear of the medial meniscus and aggravation of osteochondritis dessicans and degenerative arthrosis on account of the January 20, 2010, accident and subsequent work activities performed from January 20, 2010, through February 18, 2010. Dr. Brown testified the medial meniscus tear and contusion could aggravate the preexisting synovitis initially caused by Claimant's degenerative condition. Dr. Brown also provided an impairment rating, and opined Claimant's ongoing symptoms were consistent with the natural progression of the work-related injuries.

Following a regular hearing, ALJ Moore issued his Award concluding Claimant met his burden of proving he sustained a compensable left knee injury from the January 20, 2010, accident, but not from repetitive trauma. Benefits were denied, however, because ALJ Moore concluded Claimant did not prove he gave proper notice to Respondent. Claimant appealed.

On August 4, 2011, the Appeals Board issued its Order. The Appeals Board concluded Claimant sustained a left knee injury from an acute accident on January 20, 2010, as well as from repetitive trauma each working day through February 18, 2010. The Appeals Board did not state whether Claimant's left knee injuries were limited to the medial meniscus tear or included an aggravation of Claimant's preexisting condition. The Appeals Board concluded Claimant gave proper notice to Respondent. With regard to Claimant's permanent impairment, the Appeals Board found Claimant's permanent impairment was 7% of the left leg, based on an average of Dr. Jansson's rating and Dr. Brown's rating, attributable to the medial meniscus tear and quadriceps atrophy. Future medical was left open.

Following Dr. Jansson's release, Claimant resumed his normal work for Respondent. Claimant felt his left knee was not working the same as before the surgery, but he continued working. Claimant testified he put more effort on the right leg to compensate for the left knee. Over the past year, Claimant noticed his left knee was worsening, with more pain in the left knee radiating up and down the left leg. Claimant also noticed both legs felt very tired. Claimant continued to perform his normal work.

Claimant reported his ongoing problems to Respondent's nursing station, and was told to apply ice and take pills for the pain. Claimant sought post-award medical benefits, and filed an application for post-award medical treatment on January 26, 2021. Claimant also filed a new claim alleging he sustained injuries from repetitive trauma from January 20, 2010, through March 19, 2020, which is not the subject of these proceedings.

Dr. Murati evaluated Claimant at his attorney's request on May 21, 2020. No radiologic studies were reviewed. Dr. Murati thought Claimant probably sustained a meniscus tear of the right knee, bilateral patellofemoral syndrome, right heel sprain, right plantar fasciitis and metatarsalgia of the right 1-3 metatarsals on account of the January

20, 2010, accident, as well as repetitive trauma from January 20, 2010, through March 19, 2020. Dr. Murati recommended a left-sided total knee replacement.

Claimant also saw Dr. Pyle on his own for the left knee starting on December 23, 2020. According to Claimant, Dr. Pyle administered two injections into the left knee, with no improvement. Dr. Pyle recommended a total knee replacement.

Dr. Johnson performed an independent medical examination of Claimant at Respondent's request on July 23, 2020. Dr. Johnson noted complaints of pain in both knees and the right foot, and reviewed Claimant's medical history of rheumatoid arthritis. Dr. Johnson did not believe Claimant sustained a distinct right foot injury, and Claimant's bilateral knee symptoms were caused by rheumatoid arthritis. Dr. Johnson did not believe Claimant's condition was caused by overcompensation or represented the natural and probable consequence of the January 2010, work-related accident. Dr. Johnson believed Claimant's left knee would be in a similar condition regardless of whether Claimant underwent the meniscectomy in 2010.

ALJ Moore appointed Dr. Gurba to perform a Court-ordered independent medical examination. Dr. Gurba evaluated Claimant and issued a report dated September 10, 2020. According to the report, Dr. Gurba noted complaints of bilateral knee symptoms, with a history of a work-related left knee injury occurring on January 20, 2010. Claimant reported the right knee pain developed from compensating for the left knee. X-rays of the left knee were interpreted by Dr. Gurba as showing bone-on-bone consistent with advanced osteoarthritis. Left-sided quadriceps atrophy of the leg was noted, with limited range of motion of the left knee. Dr. Gurba diagnosed osteoarthritis of the left knee with quadriceps atrophy, but did not identify an injury to the right knee. A total knee replacement was recommended for the left knee, but no treatment was recommended for the right knee. Although Dr. Gurba believed the January 20, 2010, accident produced a medial meniscus tear, he thought the arthritic changes were not related to the work-related accident. Dr. Gurba did not believe Claimant's need for a total knee replacement was caused by a natural and probable consequence of the meniscectomy, but was due to Claimant's arthritis.

Dr. Gurba testified by deposition on December 14, 2020. Dr. Gurba confirmed he reviewed Claimant's prior treatment records, and understood Claimant sustained a left knee injury in January 2010. Dr. Gurba also understood Claimant had a prior history of rheumatoid arthritis and a prior soccer injury. Based on his review of an MRI scan, Dr. Gurba believed Claimant had early-onset arthritis based on evidence of surface cartilage changes prior to the work-related injury, and the accident produced a torn meniscus. Dr. Gurba confirmed a total knee replacement was appropriate to treat Claimant's arthritic left knee, but he did not believe the meniscectomy was the prevailing factor causing Claimant's need for a total knee replacement. Dr. Gurba testified removal of cartilage, such as a meniscectomy, from a knee with early arthritis would probably advance arthritis sooner

than in a knee without early arthritis, but he could not say the need for a total knee replacement would probably be accelerated. Dr. Gurba also testified Claimant's early treatment for rheumatoid arthritis, including taking Prednisone and Methotrexate, set Claimant up for needing a total knee replacement sooner rather than later. Dr. Gurba later testified, however, the meniscus tear sped up the need for a total knee replacement, although he was unable to state how soon the need for a replacement was accelerated. Dr. Gurba thought Claimant eventually would have needed a total knee replacement regardless of the work-related meniscus injury.

ALJ Moore issued the Post-Award Medical Award on June 30, 2021. The procedural history of this matter was reviewed, as well as Claimant's testimony his knees became more painful due to work activities performed over the past ten years. The opinions of Drs. Murati and Johnson were reviewed. ALJ Moore reviewed Dr. Gurba's report and testimony, which was interpreted as Claimant's need for the total knee replacement was due to Claimant's preexisting condition. ALJ Moore also found Dr. Gurba believed it was impossible to determine whether the January 2010, accident advanced Claimant's need for a total knee replacement. ALJ Moore concluded Dr. Gurba was the most credible medical evidence, Dr. Gurba did not relate Claimant's need for a total knee replacement to his work, and there was no evidence the total knee replacement would cure or relieve the effects of the earlier meniscus tear. Accordingly, Claimant's request for additional medical treatment was denied. This appeal follows.

#### **PRINCIPLES OF LAW AND ANALYSIS**

Claimant argues the Post-Award Medical Award is erroneous because the meniscectomy accelerated the development of arthritic changes, and a total knee replacement is the only treatment to cure or relieve the effects of the natural and probable consequence of the initial injury. Respondent argues the Post-Award Medical Award should be affirmed because the total knee replacement does not cure or relieve the effects of the work-related injury, but rather Claimant's personal, degenerative medical condition.

The version of the Kansas Workers Compensation Act in effect at the time of the injury controls the rights and obligations of the parties.<sup>1</sup> Because the date of accident is January 20, 2010, for the acute injury, and the repetitive trauma occurred from January 20, 2010, through February 18, 2010, the "old" version of the Kansas Workers Compensation Act applies to this matter. The Appeals Board may make an award for further medical care if the Board finds such care is necessary to cure or to relieve the effects of the underlying

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<sup>1</sup> See, e.g., *Jamison v. Sears Holding Corp.*, No. 109,670, 2014 WL 1887645, at \*4 (Kansas Court of Appeals unpublished opinion filed May 9, 2014).

compensable injury.<sup>2</sup> The “direct and natural consequence rule” applies in post-award medical proceedings, and future medical treatment to cure or relieve the later consequence of an injury may be awarded if the consequence is a direct and natural result of the primary injury.<sup>3</sup> The passage of time is not a compensable injury, however, and where deterioration would have occurred absent the primary injury, it is not compensable.<sup>4</sup>

In this case, it is undisputed Claimant requires a total knee replacement of the left knee. At issue is whether Respondent is responsible for providing the total knee replacement to cure or relieve a natural and probable consequence of the original left knee injury. Dr. Jansson and Dr. Brown have not examined Claimant since the initial award was issued. Dr. Murati thought Claimant required a left total knee replacement on account of both the January 20, 2010, accident and repetitive trauma from January 20, 2010, through March 19, 2020. Dr. Johnson thought Claimant required a left total knee replacement due to his underlying degenerative condition, which was not a natural progression of the primary injury. Based on the contradictory medical opinions, Dr. Gurba was appointed by ALJ Moore to perform a Court-ordered independent medical examination.

In his written report, Dr. Gurba initially stated Claimant did not require treatment for the right knee, but required a left total knee replacement on account of his arthritic changes, which were not the result of the original injury, or the natural and probable consequence of the underlying injury. At his deposition, however, Dr. Gurba testified the underlying injury aggravated Claimant’s underlying degenerative condition of the left knee. Dr. Gurba also testified it was likely the meniscus tear injury accelerated the need for a total knee replacement procedure. Dr. Gurba also acknowledged Claimant would have required a total knee replacement regardless of the meniscus injury, and he was unable to state how sooner the underlying injury accelerated the need for a total knee replacement. To prevail in a post-award medical proceeding, it is not necessary for Claimant to prove how quickly an aggravation accelerates the need for treatment. Claimant need only prove the injury or aggravation accelerated the need for treatment. Dr. Gurba’s prevailing factor opinion is not relevant to this “old Act” claim.

Because Dr. Gurba was the Court-appointed neutral physician, the Board finds the opinions Dr. Gurba provided in his deposition the most credible because he explained the basis of his opinions and was subject to examination by counsel. Based on Dr. Gurba’s opinions, the Appeals Board finds Claimant proved his underlying compensable left knee injury aggravated his degenerative arthritic condition and accelerated his need for a total knee replacement procedure. The Appeals Board also finds the total knee replacement

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<sup>2</sup> See K.S.A. 44-510k(a).

<sup>3</sup> See *Logsdon v. Boeing Co.*, 35 Kan. App. 2d 79, 82-84, 128 P.3d 430 (2006).

<sup>4</sup> See *Nance v. Harvey County*, 263 Kan. 542, 550, 952 P.2d 411 (1997).

procedure for the left knee is reasonably necessary to cure or relieve the natural and probable consequences of Claimant’s original compensable left knee injury. Claimant’s request for additional medical treatment for the left knee should be awarded. On the other hand, based on Dr. Gurba’s opinions, the Appeals Board does not award additional medical treatment for the right knee in this matter at this time. Therefore, the Post-Award Medical Award issued by ALJ Moore should be reversed in part and affirmed in part.

The record is silent as to which healthcare provider was authorized to provide additional medical treatment if additional medical treatment were awarded under K.S.A. 44-510k. Therefore, this matter is remanded to ALJ Moore with instructions to conduct further proceedings for the purpose of designating an authorized healthcare provider to provide the additional treatment awarded herein.

**DECISION**

**WHEREFORE**, it is the decision of the Board the Post-Award Medical Award of Administrative Law Judge Bruce E. Moore dated June 30, 2021, is reversed in part and affirmed in part. Claimant’s request for additional medical treatment for the left knee, pursuant to K.S.A. 44-510k, is granted. The matter is remanded to ALJ Moore for further proceedings for the purpose of designating an authorized healthcare provider to provide reasonably necessary medical treatment for the left knee. Otherwise, the Post-Award Medical Award is affirmed.

**IT IS SO ORDERED.**

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

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: (VIA OSCAR)  
Scott J. Mann  
Jared T. Hiatt  
Hon. Bruce E. Moore