Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 3, 2013

CLAIM NO. 201072188

WESTERN STATE HOSPITAL PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

TIFFANY YBARRA
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Western State Hospital ("Western") appeals from the December 12, 2012 Opinion, Award and Order rendered by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"), and from the January 11, 2013 order denying its petition for reconsideration. The ALJ determined Tiffany Ybarra ("Ybarra") sustained a right knee injury which later

resulted in problems with her left knee. The ALJ awarded temporary total disability ("TTD") benefits, permanent partial disability benefits and medical benefits. Western argues the ALJ's finding regarding causation of the left knee condition is not supported by substantial evidence. Western further argues the ALJ erred regarding the duration of the period of TTD benefits.

It is undisputed Ybarra worked for Western as a patient aide, caring for psychiatric patients, when she suffered a work-related injury. On October 17, 2010, a patient began kicking her in her right leg. She immediately experienced swelling and pain of the entire right knee. Initially, Ybarra sought medical treatment in the emergency room of Jennie Stuart Medical Center, where x-rays were performed. Several days later, she treated with Dr. Frederick Robbe who diagnosed a torn meniscus. On December 30, 2010, Dr. Robbe performed arthroscopic surgery to repair the meniscus.

At Western's request, Dr. Brian Kern evaluated Ybarra on May 8, 2011. He opined Ybarra's right knee was at maximum medical improvement ("MMI") on the day of his examination, and theorized she had reached MMI three months after her surgery. Based on the American Medical Association Guides to the Evaluation of Permanent

Impairment, 5th Edition ("AMA Guides"), Dr. Kern assigned a 3% whole body impairment rating for the right knee.

Ybarra returned to Dr. Robbe for a follow-up examination on June 2, 2011, informing him she was somewhat improved but still in substantial pain. Dr. Robbe found significant patellofemoral crepitus of the right knee, but nonetheless believed she had reached MMI as of June 1, 2011. In a letter to the workers' compensation carrier dated the following day, Dr. Robbe stated Ybarra was capable of returning to work with certain restrictions. Based on the AMA Guides, he assigned a 15% lower extremity impairment rating, which equates to a 6% whole body impairment rating.

Shortly thereafter, in July 2011, Ybarra was walking to her home mailbox, and her left knee buckled. She caught herself and did not fall, but subsequently experienced severe pain in her left knee. Upon examination, Dr. Robbe suspected another torn meniscus and ordered an MRI of the left knee. As to causation, Dr. Robbe theorized Ybarra's left knee had overcompensated as a result of the right knee injury. However, he acknowledged the possibility of "chronic anatomic issues that have been exacerbated again by the overuse of this left knee."

On July 25, 2011, Dr. Ronald J. Fadel performed a peer utilization review at the request of Western, to

determine whether the MRI of the left knee was medically necessary and related to her October 17, 2010 work injury. Dr. Fadel denied Ybarra's request, opining as follows:

> I am unable to embrace the speculation offered in this case and while recognizing the patient may in fact require MR imaging of her left knee, coverage for the undertaking is more properly sought through the patient's personal health resources, not the work claim. In conclusion, absent compelling evidence based medical data to the contrary, I would recommend denial of the MRI and denial of causation.

Though denied by the workers' compensation carrier, Ybarra subsequently obtained the MRI on October 4, 2011. It revealed "mild increased signal in the posterior horn of the medial meniscus" but no definitive evidence of a meniscal tear. Dr. Robbe diagnosed patellofemoral chondromalacia, and initially ordered physical therapy and a brace. However, Ybarra's pain persisted and on December 29, 2011, Dr. Robbe performed an arthroscopy and chondroplasty of her left patella.

Following the surgery, Dr. Robbe elaborated on his opinion Ybarra "most likely had a pre-existing, dormant, non-disabling disease condition in her left knee that was aroused and brought into symptomatic reality as she overcompensated as a result of the right knee injury." He assigned a 4% whole body impairment rating pursuant to the

AMA Guides for the left knee. He further estimated her left knee reached MMI on January 11, 2012.

Dr. Kern performed a second IME primarily concerning the left knee and issued a report on April 3, 2012. Dr. Kern agreed with Dr. Robbe's diagnosis of chondromalacia, but disagreed the condition is work-related. Rather, he attributed the condition to anatomical issues aggravated by Ybarra's body weight. Dr. Kern opined Ybarra reached MMI for her left knee approximately six months postoperatively, or about June 1, 2012. Pursuant to the AMA Guides, Table 17-31, Dr. Kern assigned a 0% whole person impairment rating for the left knee.

Ultimately, in the December 12, 2012 Opinion, Award and Order, the ALJ found Ybarra had suffered a work-related injury to her right knee on October 17, 2010. He further found Ybarra's left knee condition causally related to the right knee injury. In the opinion and order, the ALJ noted he found Dr. Robbe's medical opinion particularly persuasive because he "had a continuous opportunity to make medical observations of [Ybarra]" during his treatment of her over a fourteen-month period. The ALJ further noted Ybarra was a credible witness with "no evidence that she is a malingerer."

The ALJ accepted Dr. Robbe's whole person impairment rating of 6% for the right knee, and 4% whole person impairment rating for the left knee. Combined, the ALJ assigned a 10% whole person impairment rating. The ALJ awarded TTD benefits for the right knee injury for the period from October 18, 2010 until January 11, 2012, enhanced by the three multiplier pursuant to KRS 342.730(1)(c)1.

Western filed a petition for reconsideration arguing Ybarra was not entitled to TTD benefits for the period from June 1, 2011, the date she reached MMI for her right knee, and October 9, 2011, the onset of her left knee problems. Western also requested an additional finding regarding how the left knee problem, which manifested at home, could be considered a work-related condition.

In his January 11, 2013 Order on Petition for Reconsideration, the ALJ indicated he awarded TTD benefits for the period from June 2, 2011 to October 9, 2011 because he found Ybarra had not reached a level of improvement that would permit a return to employment due to her continuing restrictions. Regarding the compensability of the left knee condition, the ALJ stated he "… clearly found that the left knee injury arose out of the effects on the left knee as a

result of the right knee injury. This was a factual finding specifically set out at Page 16, Paragraph 5."

On appeal, Western now argues the ALJ's finding Ybarra's left knee condition is work-related is not supported by substantial evidence. This argument is entirely based on the fact Ybarra first experienced pain while walking to her mailbox at home. Yet, she informed Dr. Robbe in October of 2011 she could not recall any particular accident, injury or trauma to the left knee. Western contends Dr. Robbe did not have all the relevant history to make a determination as to whether the left knee condition was work-related.

We begin by noting a compensable injury is "any work-related traumatic event or series of traumatic events . . . which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings." *See* KRS 342.0011(1). The term "proximate cause," as used in the above definition, has been held to be synonymous with "direct cause." Coleman v. Emily Enterprises, Inc., 58 S.W.3d 459, 462 (Ky. 2001) (*citing* Dunn v. Central State Hospital, 197 Ky. 807, 813, 248 S.W. 216, 218 (Ky. App. 1923); Bryan A. Garner, A Dictionary of Modern Legal Usage (2d ed. 1995); *and* Black's Law Dictionary (5th ed. 1979)). However, in Dunn vs. Central

State Hospital, supra, the court explained that "[t]he 'proximate cause' of an injury is, according to the experience of mankind, probably that cause which leads to the event which happened." Historically, proximate cause connotes an unbroken chain of events.

Consistent with the doctrine of proximate cause, our courts have long recognized the general rule that workers' compensation benefits must be allowed for all the injurious consequences flowing from a work-related injury. Beech Creek Coal Co. v. Cox, 314 Ky. 743, 744, 237 S.W.2d 56 (Ky. 1951). For purposes of the Act, "injury" has been held to include all direct and natural consequences of the original injury that are not attributable to an independent, intervening cause. In Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997), the court explained the "direct and natural consequence rule" as follows:

> The applicable rule has been referred to as the direct and natural consequence rule and is explained in Larson, Workmen's Compensation Law, § 13.11 (1996), as follows:
>
> > The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury is compensable if it is the direct and natural result of a compensable

> primary injury. See also Dutton v. Industrial Comm'n of Arizona, 140 Ariz. 448, 682 P.2d 453 (Ct. App. 1984); and Beech Creek Coal Co. v. Cox, 314 Ky. 743, 237 S.W.2d 56 (1951).

Id. at 423.

Here, substantial evidence supports the finding Ybarra's left knee condition is a direct consequence of the right knee injury. Dr. Robbe stated Ybarra's left knee condition was the result of overcompensating as a result of the right knee injury. Ybarra stated she felt she was putting too much pressure on her left knee because of the weakness in her right knee, and the ALJ found her to be a credible witness. It is immaterial that Ybarra's left knee buckled while she was at home rather than at work because the condition of the right knee precipitated the problem in the left knee. Dr. Robbe's opinion that the right knee condition was responsible for the arousal of the left knee condition constitutes substantial evidence. Where the ALJ's decision is supported by substantial evidence in the record, we may not reverse. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Western argues the ALJ misapplied the law regarding the award of TTD benefits for the period from June

2, 2011 to October 9, 2011. Western notes Ybarra reached MMI for her right knee condition on June 1, 2011. Her left knee problems did not begin until October 10, 2011. Thus, Western argues Ybarra was not entitled to TTD benefits between the date she reached MMI for the right knee condition and the date symptoms began in the left knee.

In Double L Const., Inc. v. Mitchell, 182 S.W.3d 509, 513-514 (Ky. 2005), the Supreme Court elaborated with regard to the standard for awarding TTD as follows:

> As defined by KRS 342.0011(11)(a), there are two requirements for TTD: 1.) that the worker must not have reached MMI; and 2.) that the worker must not have reached a level of improvement that would permit a return to employment. *See* Magellan Behavioral Health v. Helms, 140 S.W.3d 579, 581 (Ky. App. 2004).

It is uncontroverted Ybarra had reached MMI by June 1, 2011 following the right knee surgery. Further, the earliest date at which her left knee condition manifested itself is July 2011, when her left knee buckled. However, the ALJ specifically found Ybarra was temporarily totally disabled due to her left knee condition from October 10, 2011 through January 10, 2012. Thus, from June 2, 2011 to October 9, 2011, it cannot be said Ybarra was not at MMI. As a matter of law, she was not entitled to TTD benefits.

Therefore, we must vacate and remand for entry of an amended opinion and award providing for the award of TTD benefits from October 18, 2010 through June 1, 2011 and from October 10, 2011 through January 10, 2012.

Accordingly, the December 12, 2012 Opinion, Award and Order rendered by Hon. Steven Bolton, Administrative Law Judge, and the January 11, 2013 order on reconsideration are **AFFIRMED IN PART, VACATED IN PART AND REMANDED** for entry of an amended decision in conformity with the views expressed herein.

ALL CONCUR.

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