

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

County of Berks, :  
Petitioner :  
 :  
v. :  
 :  
Workers' Compensation :  
Appeal Board (Nagle), : No. 2324 C.D. 2010  
Respondent : Submitted: April 21, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE McGINLEY

FILED: August 24, 2011

County of Berks (Employer) challenges the April 27, 2009, Decision and Order of the Workers' Compensation Appeal Board (Board) which affirmed the decision of the Workers' Compensation Judge (WCJ) who granted David Nagle's (Claimant) Review Petition against Employer and its third party administrator, The PMA Group, dated December 28, 2007.

On December 28, 2007, the WCJ granted Claimant's Petition after he determined that Claimant suffered bilateral knee injuries on September 19, 2006, which resulted in a December 21, 2006, left knee replacement and a January 29, 2007, right knee arthroscopic partial meniscectomy. On April 27, 2009, the Board affirmed the Decision with respect to all issues except the calculation of the Average Weekly Wage, the calculation of which was remanded to the WCJ. Following the Board's April 27, 2009, Order, Employer submitted a Petition for Review to this Court. This Court did not address the Petition because the Board's

Order was not final. On February 19, 2010, the WCJ issued an Order that adopted a Stipulation of counsel regarding the issue of Average Weekly Wage. Employer submitted a Petition for Review docketed as 2325 C.D. 2010 concerning the grant of the Claim Petition. This Court affirmed the Order of the Board.<sup>1</sup>

On June 10, 2008, the Claimant filed a Review Petition alleging that his right knee replacement was causally related to his September 19, 2006, work injury.

Claimant testified that he suffered no traumatic incidents or injuries between September 2006, and May 2008. Notes of Testimony (N.T.), July 8, 2008, at 11. After his December, 2006, left knee replacement, and January 2007, right knee arthroscopic surgery, he returned to work in the Employer's light duty program on July 2, 2007. While recuperating from his left knee replacement he observed that when he transferred his weight to his right knee the pain increased in intensity. N.T., 7/8/08, at 11. His right knee condition did not improve and never returned to its pre-2006 condition. The knee continued to get more and more painful. N.T., 7/8/08, at 12. Because of increasing pain in both knees, he stopped working as of April 23, 2008. N.T., 7/8/08, at 9. The May 2008, surgery included restructuring his left knee and replacing his right knee. He continued to receive outpatient physical therapy and continued to treat with Thomas Meade, M.D. (Dr. Meade). N.T., 7/8/08, at 10.

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<sup>1</sup> On December 15, 2010, Employer applied to have the instant matter consolidated with Commonwealth Court matter No. 2325 C.D. 2010. By Order dated December 15, 2010, this Court denied Employer's Application for Consolidation.

In further support of his Petition, Claimant offered the April 13, 2007, deposition testimony of Dr. Meade, a Pennsylvania- licensed physician since 1984, Board-certified in orthopedic surgery in 1991, re-certified in 2001. His practice focused on disorders of the knees and knee surgery. Dr. Meade opined to a reasonable degree of medical certainty that there was a causal relationship between the diagnosed tear of the medial meniscus in the right knee to the work-related incidents of September 19, 2006. Deposition of Dr. Meade (Meade Deposition), April 13, 2007, at 16; Reproduced Record (R.R.) at 345a. During the 2007 surgery, the doctor identified meniscus and joint lining damage. Dr. Meade determined that Claimant’s deteriorating function of the knee required a total knee replacement. Dr. Meade also opined “that we would not have done a total knee replacement... in December of ’06 despite his previous work-related injuries and osteoarthritis had it not been for the... September 2006 injury which definitely accelerated the need for a knee replacement in his left knee. Meade Deposition, 4/13/07, at 56; R.R. at 385a.

Dr. Meade also testified that he understood why the Employer’s medical expert would opine that the need for the arthroscopy was degeneration, and that the replacement surgery was due to the natural progression of pre-existing non-work-related degenerative arthritis. Meade Deposition, September 29, 2008, at 13; R.R. at 488a. However, Dr. Meade performed the arthroscopic surgery, and viewed the inside of the Claimant’s right knee. Meade Deposition, 9/29/08, at 13; R.R. at 488a. He was able to observe “significant meniscus and cartilage damage,” that the surgery did not correct or improve, and it continued to deteriorate over

time. He observed damage that was worse than the diagnostic studies had indicated. Meade Deposition, 9/29/08, at 13; R.R. at 488a.

In opposition to the Petition, Employer presented the deposition testimony of Gregory Hanks, M.D. (Dr. Hanks), a Pennsylvania-licensed physician board certified in orthopedic surgery. His practice focused predominantly on knee and shoulder problems. Dr. Hanks opined that there was no significant changes between the 2002 and 2006 right knee MRIs, and that the January 2007, arthroscopic procedure was for advanced arthritis and a degenerative meniscus tear. He opined that the need for the 2008 replacement surgery was the natural progression of a pre-existing degenerative condition. Deposition of Dr. Hanks, December 11, 2008, at 16-18; R.R. at 530a-532a.

The WCJ granted the Petition to Review Medical treatment and/or Billing and concluded that the Claimant met his burden of proving the right knee replacement was causally related to his work injury and was compensable:

#### FINDINGS OF FACT

2. The undersigned's December 28, 2007, Decision granted Claimant's Claim Petition, finding that he suffered bilateral knee injuries on September 19, 2006, resulting in December 21, 2006, left knee replacement surgery and January 29, 2007, right knee arthroscopic partial meniscectomy surgery. The issue is whether his May 8, 2008, right knee replacement was due to the non-work-related and natural progression of pre-existing degenerative arthritis or whether the work-related left knee injury and replacement and right knee injury and January 29, 2007, arthroscopic surgery aggravated or

reactivated the pre-existing degenerative condition or accelerated the need for replacement...

....

13. I find Claimant's testimony competent, credible, and persuasive that his right knee condition worsened after the 2006 September injury and December left knee replacement and January 2007 right knee arthroscopic surgery, and that it never returned to pre-injury baseline. I credit his testimony that the left knee surgical procedure placed added stress on his right knee thereafter.
14. I find the testimony of Dr. Meade competent, credible, and persuasive for the same reasons that I found him credible in my prior Decision. He was the treating physician over a long period of time, performed numerous examinations, observed changes in condition over time, performed surgical procedures, and had first-hand knowledge of the condition of Claimant's knees. His explanation of the continuing and accelerated degeneration and need for replacement is logical and persuasive.
15. I find the testimony of Dr. Hanks competent but less credible than the testimony of Dr. Meade. He evaluated Claimant only briefly, and he misunderstood his surgical history. A portion of his opinion is based upon 2002 right knee surgery which did not take place. Wherever the physicians disagree, I credit Dr. Meade.

WCJ's Decision, March 30, 2009, Findings of Fact No.s 2 and 13-15 at 1 and 5-6;  
Reproduced Record (R.R.) at 103a and 107a-108a.

Employer subsequently filed an appeal with the Board, which affirmed.

Employer contends<sup>2</sup> that the Board erred in affirming the WCJ's Decision of March 30, 2009, and should be reversed as being moot if the WCJ's Decision of December 28, 2007, granting the underlying Claim Petition is reversed by the Court.

This Court, in the matter of County of Berks v. Workers' Compensation Appeal Board (Nagle), (Pa. Cmwlth. No. 2325 C.D. 2010, filed August 11, 2011), has determined that the Board did not err when it affirmed the WCJ's Decision to grant Claimant's Petition. This Court has affirmed the Board at 2325 C.D. 2010, and this affirmance controls in the present matter because that matter involved this same Claimant, this same disability, and the same issue of causation.

Accordingly, this Court affirms.

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BERNARD L. McGINLEY, Judge

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<sup>2</sup> This Court's review is limited to a determination of whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, or whether constitutional rights were violated. Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291 (Pa. Cmwlth. 1991).

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Workers' Compensation	:	
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	:	Respondent

**ORDER**

AND NOW, this 24th day of August, 2011, the order of the Workers' Compensation Appeal Board in the above- captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge