Understanding The Legal & Medical Reasons WHY Documented Knee Injuries Are Allowed, But When Osteoarthritis Is Discovered in an MRI or Post-operatively, Surgery Is Denied by WSIB

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I have written a number of articles regarding common injuries electrical workers experience (shoulder & spine) where a pre-existing condition (arthritis) results in a workers claim being denied. This month, I'll focus on knee injuries.

Knee injuries are common in the trade, and often times involve a twisting injury dismounting a ladder, getting into a squat, or rising from a crouch when a snap is felt. Pain and swelling quickly follow. Clearly these injures arose out of and in the course of employment, and typically a WSIB claim is allowed.

However, if the knee symptoms persist and an MRI reveals degenerative knee pathology, or an orthopaedic surgeon's post-operative report describes a degenerative meniscal tear, WSIB will terminate ongoing entitlement.

Tribunal *Decision #926/19* is a good example how we challenge these decisions. This case involved a 37-year old electrician with a past history of documented work related knee injuries, including surgery. In January 2016 this journeyman was walking over some uneven tarps and ground and twisted his knee. An orthopaedic surgeon suggested he undergo an arthroscopic procedure to repair the damaged knee. WSIB denied entitlement to a torn meniscus on the basis that the original diagnosis was an acute knee strain and the MRI findings indicated a degenerative tear. The Tribunal Panel in its reasons concluded:

> [15] The worker testified that he started as an apprentice technician at the age of 24 and became a fully licensed electrician in 2009. The worker testified that he was always engaged in sports such as hockey, baseball and golf as an adult. Notwithstanding his participation in sports and a demanding career as an electrician, the worker has a history of previous injuries to both his left and right knee.
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> [16] In 2011 the worker injured his right knee while at work. In that accident, the worker was at a worksite working as a supervisor and was conducting a "walkabout" when he stepped down into a floor depression and onto a pipe, thereby twisting his right knee. He was sent for an MRI which also showed that the worker had suffered a horizontal meniscal tear. The worker, despite the injury and symptoms, continued to work. However, due to his symptoms it was recommended that he undergo an arthroscopic procedure. The procedure was performed on June 1, 2012.
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> [17] Following the procedure in 2012, the worker was off work for several weeks and he testified it took several months for his knee to completely heal. Once the worker was well enough to return, he resumed all his regular duties and he again took up his recreational sporting activities including hockey, baseball and golf, and he did so with no impairments whatsoever.

The Medical Evidence

[23] The medical opinions in this case are set up in two reports and a medical consult note. The first report was prepared by the Board's Consultant, Dr. Stevens, who came to the following conclusions:

> I have reviewed the material provided and have reviewed the specific questions posed.
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> 1. In my opinion, based on the mechanism of injury (MOI) and accident history, the work-related diagnosis for the right knee is acute right knee sprain.
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> 2. The MRI of the right knee performed on 20 Jun16, 5 months after the DOI, showed a horizontal meniscal tear involving the posterior root, posterior horn, and body of the medial meniscus which extends to the inferior articular surface and a tiny joint effusion. In my opinion, the horizontal meniscal tear is not related to the MOI and accident history as horizontal meniscal tears are typically degenerative in nature and the posterior horn of the medial meniscus is the commonest area for degenerative tears as described above. The tiny joint effusion is not related to the injury and is likely a consequence of the degenerative meniscal tear.
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> 3. In my opinion, the recommended right knee scope (surgery date not available yet) is not related to the workplace injury of 25Jan16 and therefore, not the responsibility of the claim as the surgery is proposed for a torn degenerative medial meniscus.

[24] The worker submitted a report from the family physician, Dr. Khosla. Her report provided the following opinion:

> Meniscal tears most commonly occur with take out twisting of the knee while that same foot is planted on the ground. However older patients may develop a minimal tear with little or no trauma.
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> [The worker] had a right knee arthroscopy and partial medial meniscectomy in June 2012. The consult note dated Oct 15th 2012, from his surgeon at the time (Dr. Chris Anthony) states that [the worker] was still having some discomfort post-surgery but felt he could resume back to his regular duties at work. [The worker's] right knee pain returned acutely In January 2016 after a twisting injury of his right leg while it was planted, walking on uneven ground at work.

> It is difficult to delineate whether the tear occurred due to age or work, as the tear could have been present before the date of injury. However, given the acuteness of the symptoms and the mechanism of the injury, it is probable it was related to the injury in January 21, 2016. If the tear was present beforehand and [the worker] was asymptomatic, the twisting injury in January of 2016 could have aggravated the underlying tear.

[26] The final piece of medical evidence that was before us with respect to the right knee was the WSIAT Medical Discussion Paper, *Knee Conditions and Disability* prepared in August of 2013 by Dr. John Cameron and Dr. Marvin Tile. This discussion paper was provided to all parties in the case materials. The relevant portions of the paper stated:

> There are two general types of meniscal tears; acute tears which usually occur in younger people after trauma, and degenerative tears, which typically occur in older people with minimal or no trauma.
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> Acute Meniscal Tears in young people may be isolated or associated with complex ligament injuries. These tears are usually longitudinal and in substance. If symptomatic and at the periphery, these tears may be amenable to repair. These tears as noted on MRI and at arthroscopic surgery, usually have longitudinal or radial patterns. A fully displaced tear may displace into the center of the joint, such as a bucket handle, and may cause the joint to lock. Radial tears may continue to evolve and progress to become a parrot beak tear.
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> Degenerative tears, usually in older people, are often associated with osteoarthritis. It is often difficult to determine whether the symptoms are due to the meniscal tear or the associated arthritis. These tears are usually horizontal, flap or complex types. They are found on a high percentage of MRIs in people with known osteoarthritis of the knee. There is no relationship to a history of trauma. As in all meniscal tears, they may cause symptoms of pain, locking, giving way and/or swelling or they may be asymptomatic. It is often difficult to distinguish the symptoms associated with the osteoarthritic knee from those of the degenerative meniscus.

[32] Dr. Rosenfeld, the orthopaedic surgeon consulted by the worker, has suggested a procedure to deal with the tear to alleviate the worker's symptoms. Dr. Rosenfeld's note implied that the tear may be work-related but he does not specifically opine on the issue. What is most significant about Dr. Rosenfeld's report was that it confirmed that the symptoms of knee pain were likely related to the tear as these symptoms could be alleviated by the surgery. Thus, if the accident rendered the tear symptomatic, as opined by Dr. Khosla, then the surgery by necessary implication would be related to the accident as well.

[34] The worker testified that prior to this twisting knee injury he had no symptoms of pain or discomfort in his right knee. The worker acknowledged that he had experienced a previous injury in 2011 which was also caused by a twisting traumatic event and it was successfully treated by an arthroscopic procedure. The worker also testified that he had consistent pain and discomfort since this twisting incident which resulted in his doctor ordering an MRI in March of 2016 and which was not actually scheduled until June of 2016. We find that the worker was a credible witness on his own behalf.

[35] The nature of the tear was likely because of the natural degenerative process in the worker's knee. We accept the opinion of Dr. Stevens in that regard, as it was consistent with the Tribunal Medical Discussion Paper on knee injuries, referenced above. Dr. Khosla also acknowledged that the tear could be degenerative.

[36] The mere fact that the tear was degenerative, however, does not end the inquiry into causation. The Panel must consider the impact of the accident on the worker's preexisting condition. Decision No. 652/87 raises the issue of the distinction between disabling symptoms appearing as the result of the impact of employment on a pre-existing degenerative condition. In one way, these symptoms may be fairly taken as reflecting a compensable exacerbation or acceleration of a pre-existing condition. Alternatively, the disabling symptoms appearing as a pre-existing degenerative condition may be fairly taken as merely evidence of the disabling nature of the pre-existing condition. It is between these two possibilities that the Panel must decide.

[41] We make our finding on causation in part on the basis that we prefer Dr. Khosla's opinion that the mechanism of the accident could have exacerbated or made symptomatic the pre-existing condition. Dr. Stevens, in his report, did not consider this theory. He simply relied on the initial diagnosis which was made before the MRI was undertaken, that the worker suffered a simple knee strain. Dr. Khosla did provide a reasoned and compelling basis to establish a relationship between the accident, the degenerative tear and the symptoms that the worker was experiencing. Furthermore, Dr. Khosla, as the worker's treating family physician, and having examined the worker on a more frequent basis, would have been in a better position to comment on the progression of the worker's right knee meniscal tear condition.

[44] We conclude, therefore, on a balance of probabilities, that the symptoms that the worker experienced in his right knee were caused by the accident of January 25, 2016, in that the accident rendered the worker's pre-existing condition symptomatic.

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