

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**DIANA CONVIRS** )  
Claimant )  
V. )  
 ) AP-00-0482-730  
**WALMART** ) CS-00-0464-689  
Respondent )  
AND )  
 )  
**AIU INSURANCE CO (NATIONAL UNION FIRE** )  
**OF PITTS PA)** )  
Insurance Carrier )

**ORDER**

Claimant appealed the April 29, 2024, Award by Administrative Law Judge (ALJ) Brian Brown. The Board heard oral argument on August 29, 2024.

**APPEARANCES**

William L. Phalen appeared for Claimant. Brenden W. Webb appeared for Respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Regular Hearing, from October 5, 2023; Regular Hearing by Deposition of Diana Convirs, taken October 19, 2023; Evidentiary Deposition of Pedro A. Murati, M.D., taken October 30, 2023, with exhibits attached; Video conference Deposition of Jonathan L. Grantham, M.D., taken January 25, 2024, with exhibits attached and the documents of record filed with the Division. The Board also considered the parties' briefs.

**ISSUES**

1. What is nature and extent of Claimant's permanent disability and impairment due to the work accident of March 29, 2022?
2. Is Claimant entitled to future medical treatment?

**FINDINGS OF FACT**

Claimant worked for Respondent for 16 years. Claimant is 67 years old. In March 2022, Claimant worked as an overnight stocker, which required Claimant to push and pull heavy pallet jacks with merchandise and put the merchandise on the shelves.

On March 29, 2022, Claimant was operating a heavy pallet and felt something pull in her left leg with immediate pain. The next day, Claimant reported the incident to her supervisor. Respondent did not send Claimant for medical treatment so after her pain increased, she sought medical treatment on her own. Respondent eventually sent Claimant to Dr. Coltharp at Via Christi Occupational Health and an MRI of the left knee was ordered.

Claimant was referred to Dr. Jonathan L. Grantham for a surgical consultation. Claimant had surgery on her left knee September 19, 2022.

After her surgery, Claimant chose to use a walker for a couple of months for balance instead of the prescribed crutches. Claimant was prescribed physical therapy.

Claimant reported pain and swelling in her left knee before and after surgery. She reported these complaints to Dr. Grantham and he provided additional medical treatment in the form of a cortisone injection. The injection helped for a month and but the pain returned to what it was before the injection. Dr. Grantham did not provide any further treatment, but felt Claimant was a candidate for knee replacement.

According to Claimant, she has limped since the accident favoring her left leg. Since the surgery, Claimant has developed problems with her right knee, right hip and lower back. Claimant believes this pain is from overcompensating for the left knee. Claimant testified she reported this to Dr. Grantham and was told the pain would continue until she took care of the left knee. Claimant denies any prior right knee, leg or hip problems. Dr. Grantham did not examine Claimant's right knee, right hip or low back.

Claimant testified she has problems with prolonged sitting (more than 20 minutes) and walking. Claimant does a lot of heavy lifting and has pain from the squatting and stooping. Claimant alternates sitting, standing and laying down to alleviate her pain. The pain can keep her awake at night. Claimant reports constant pain around her left knee calf area, lower back, right hip and right knee. She alternates using prescription anti-inflammatory medication, prescribed by her personal doctor and ibuprofen. Claimant uses a topical rub on her knees and a knee sleeve on her left knee. Claimant would not be able to work for Respondent if she did not take this medication and use the cream.

Dr. Grantham is an orthopedic surgeon and ten percent of his practice is devoted to workers compensation injuries. When he first saw Claimant, her complaints were limited

to her left knee. She did walk with a limp. His examination showed tenderness to palpation over the posterior medial joint line and tenderness over the lateral joint line. A Flick test revealed no laxity. X-rays were ordered and showed mild medial compartmental joint space narrowing and chondrocalcinosis of the medial and lateral compartments.

Dr. Grantham reviewed Claimant's MRI, which revealed a radial tear at the junction of the body and posterior horn of the medial meniscus, a free-edge tearing of the posterior root and body of the lateral meniscus and arthritis with the patella, femoral and joint and medial compartment. Based upon his examination, he recommended treatment and Claimant opted for arthroscopy surgery, performed on September 19, 2022.

Dr. Grantham saw Claimant again on November 1, 2022, when Claimant reported her knee was better than before surgery. Dr. Grantham saw Claimant on December 8, 2022, and she had full range of motion in her knee with no instability with negative Flick's and McMurray's tests. She was able to ambulate with a normal gait. Claimant was returned to work with no restrictions.

On January 10, 2023, Dr. Grantham diagnosed Claimant with left medial meniscus tear and osteoarthritis. He found Claimant to be at maximum medical improvement. He assigned a 2 percent impairment rating to the left lower extremity as of January 23, 2023. In documenting his rating Dr. Grantham filled out a form titled "J G Ratings Impairment Rating". The form asked for Dr. Grantham to provide the date of completion of the form, reason or subject for the form (RE), insured/employer, a claim number, policy, the date of injury, Claimant name, the current diagnosis ("L medial meniscus tear osteoarthritis"), whether patient reached maximum medical improvement, whether there was a permanent partial disability, and an permanent partial disability rating which was "2% to the level of the lower extremity" and his signature. The date of injury provided on the form was "4/22".<sup>1</sup> Dr. Grantham did not examine Claimant at the time he rated her. He testified at his deposition that he relied on the *American Medical Association Guides to the Evaluation of Permanent Impairment 6<sup>th</sup> Edition (The Guides)*. He could not recall what pages or tables he relied on in *The Guides* except to say he reviewed a section titled "Lower Extremity Procedures—Meniscectomy" in the knee section.<sup>2</sup>

Dr. Grantham saw Claimant on February 9, 2023, who reported pain in the left knee, but no new injury. Claimant had returned to full duty and her left knee pain was located in the medial and lateral aspect and would radiate down the leg. If she sat for too long and tried to get up, she would have discomfort. Dr. Grantham ordered an MR arthrogram to check for a recurrent tear.

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<sup>1</sup> Grantham Depo., Ex. 3.

<sup>2</sup> *Id.* at 15, 29-30.

On March 16, 2023, Claimant met with Dr. Grantham's physician assistant James K. Gilkerson who reported the arthrogram showed a recurrent tear of the medial meniscus and showed significant degenerative changes on a previous arthroscopy as well as an MRI. Mr. Gilkerson opined Claimant's symptoms were likely attributable to the degenerative changes. He recommended a steroid injection and repeat evaluation in three weeks.

On April 6, 2023, Claimant reported pain relief from the injection and had no complaints and no medication was prescribed. On May 25, 2023, Claimant reported some soreness, but was able to do all activities at home and at work. Dr. Grantham did not rate Claimant after January 2023, so the rating does not include the radicular pain, the recurrent meniscal tear or the steroid injection.

Dr. Grantham opined Claimant would not require any permanent work restrictions or future medical treatment as a result of the work injury. Dr. Grantham testified he never examined Claimant's right leg, or the low back because he was not asked to do so.

Dr. Pedro A. Murati examined Claimant on June 15, 2023, at the request of her attorney. Claimant's complaints were: pain in the left knee and front of left leg and down the calf, pain when sitting or getting up from seated position, difficulty walking long distances, and occasional right knee pain. Claimant reported having some difficulty with her activities of daily living.

Dr. Murati diagnosed Claimant with: status post left knee surgery, bilateral medial and lateral collateral ligament sprains, left patellofemoral syndrome, bilateral pes anserine bursitis, and lumbar radiculopathy due to antalgia. He testified Claimant did not know she had a pinched nerve due to her limping. Dr. Murati opined the diagnoses are within all reasonable medical probability a direct result from the work-related injury on March 29, 2022. He testified the limping caused overuse of the right knee and the low back problems.

Dr. Murati opined Claimant has an 18 percent impairment to the body as a whole due to the work accident. The impairment rating consisted of the following: 1 percent to the right lower extremity for right medial collateral ligament sprain; 1 percent to the right lower extremity for right lateral collateral ligament sprain; 1 percent to the right lower extremity for pes anserine bursitis; 7 percent to the right lower extremity for post traumatic degeneration of the right knee. These ratings for the right lower extremity combine for a 10 percent impairment to the right lower extremity, which converts to a 4 percent body as a whole impairment. For the left lower extremity, Dr. Murati found 1 percent to the left lower extremity for medial collateral ligament sprain; 1 percent to the left lower extremity for left lateral collateral ligament sprain; 3 percent for left patellofemoral syndrome; 7 percent to the left lower extremity for post traumatic degeneration of the left knee; and 1 percent to the left lower extremity for pes anserine bursitis. These ratings for the left lower extremity combine for a 13 percent, which converts to a 5 percent body as a whole impairment. For lumbar radiculopathy and Claimant's back complaints, Dr. Murati found

11 percent impairment to the body as a whole. Dr. Murati utilized *The Guides* as a starting point and then used his medical expertise and knowledge to arrive at this rating.

After reviewing the operative report of the left knee and becoming aware of the MR arthrogram, Dr. Murati added an additional 3 percent impairment to the left lower extremity, making the total impairment 16 percent, which converts to a 6 percent body as a whole impairment. The total combined impairment is 19 percent impairment to body as whole.<sup>3</sup>

Dr. Murati found Claimant has no significant preexisting injuries relating to the current diagnoses. To his knowledge, her degenerative disc and joint disease preexisted the work injury, but was asymptomatic before the injury.

Dr. Murati opined Claimant's accident caused her to sustain enough permanent structural change in the anatomy of her knees and low back causing pain requiring treatment. Therefore, Dr. Murati found under all reasonable medical certainty the prevailing factor in the development of Claimant's complaints to the low back, left knee, and right knee was the work accident.

Dr. Murati assigned permanent work restrictions based on an 8 hour work day of: no climbing ladders, squatting, crawling, driving, kneeling, repetitive foot controls with the right or left. No lifting, carrying, pushing or pulling over 35 pounds, 35 pounds occasionally, 20 pounds frequently and 10 pounds constantly, rarely climb stairs, occasionally stand or walk, alternate sitting, standing and walking, and no lifting below knuckle height.

Dr. Murati recommended future medical treatment including but not limited to yearly follow-ups for the knees and low back, anti-inflammatory medication, and total knee replacement. He opined the radiculopathy needs to be treated, including possible surgery.

Claimant returned to work with no restrictions on December 8, 2022, and is performing the same job duties as before her accident.

The ALJ held Claimant has a 10 percent impairment to the left knee. The ALJ did not find either Dr. Murati or Dr. Grantham ratings to be credible and instead calculated his own impairment rating by using Dr. Grantham's 2 percent rating to the left lower extremity and part of Dr. Murati's rating to the left knee. The ALJ excluded the following of Dr. Murati's rating of the left knee in finding Claimant's impairment due to the accident. He excluded 1 percent impairment for left medial collateral ligament sprain, 1 percent for left lateral collateral ligament sprain, 3 percent impairment for left patellofemoral syndrome and 1 percent for impairment for pes anserine bursitis. The ALJ went on to find Claimant failed to satisfy by a preponderance of the credible evidence there was impairment to the right

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<sup>3</sup> Murati Depo. at 16-17.

knee and the lumbar spine as a result of the work injury. He found Claimant entitled to future medical for the left knee only. Respondent was ordered to pay an unpaid medical bill totaling \$496 arising from an authorized surgery.

### PRINCIPLES OF LAW AND ANALYSIS

Claimant appeals arguing the Board should modify the Award to find a 19 percent impairment to the whole body as determined by Dr. Murati for the low back, left leg and right knee. Claimant requests future medical for the low back and right knee.

Respondent argues the Award should be affirmed. Respondent contends Claimant failed to prove by a preponderance of the evidence she sustained any impairment to the right knee and low back due to the work accident. Respondent argues the evidence is uncontroverted Claimant limped before her left knee surgery, but walked normally after and argues no records in evidence supporting knee issues or back complaints. Finally, Respondent argues Claimant failed to prove entitlement to future medical for the right knee and lower back.

K.S.A.44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

#### **1. The nature and extent of Claimant's permanent disability or impairment is 16 percent impairment to the left lower extremity.**

Both parties agree Claimant suffered an injury to her left knee. Claimant is claiming she has permanent impairment to her right knee and low back as a consequence of the left knee injury. Dr. Murati agreed with her and rated both the low back and right knee.

This Board agrees with the ALJ's finding Claimant does not have permanent impairment to her low back and right knee. There are scattered complaints in the medical record regarding low back and right knee complaints, but Claimant never sought to obtain treatment. This Board is not persuaded Claimant has permanent impairment to her right knee and low back due to her work accident.

An injury to left knee is a scheduled injury. K.S.A. 44-510d(b)(23) states:

Loss of or loss of use of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined by using the fourth edition of the American medical association guides to the evaluation of permanent

impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on after January 1, 2015, shall be determined by using the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained within.

The Kansas Supreme Court in *Johnson v. U.S. Food Service* held the extent of functional impairment is determined by competent medical evidence, using the *AMA Guides* as a starting point.<sup>4</sup> The Kansas Court of Appeals in *Weaver v. Unified Government of Wyandotte County* recently held this same analysis applies to scheduled injuries.<sup>5</sup>

Two doctors rated Claimant's injuries. Neither doctor's opinions are particularly persuasive. However, Dr. Grantham rating lacks credibility and is rejected by this Board. Dr. Grantham's rating provided no analysis or basis for his rating. He simply filled out a form and stated "2% impairment to the left lower extremity." The form asked for a date of accident and his entry stated 4/22. However, Claimant's injury occurred on March 29, 2022. The form provided no reference to *The Guides* or any other explanation other than there is "meniscus tear, osteoarthritis 2% impairment." At his deposition he testified he used *The Guides* but could not recall what section or table. He thinks he reviewed Lower Extremity Procedures-Menisectomy, knee section." There is no reference by Dr. Grantham as to what, if any competent medical evidence he relied on to calculate his rating. Dr. Grantham did not examine Claimant at the time he rated her. A MR arthrogram ordered after the rating was issued because Claimant had ongoing complaints in her left knee. It showed a recurrent tear. Dr. Grantham did not review his rating, taking into account the findings on the MR arthrogram. The Board finds Dr. Grantham's rating not credible.

The only other rating in the record is from Dr. Murati. Dr. Murati originally rated Claimant's left knee impairment at 13 percent to the left lower extremity. This rating included a medial collateral ligament sprain, lateral collateral sprain, patellofemoral syndrome, post traumatic degeneration of left knee and pes anserine bursitis. After Dr. Murati reviewed the operative report and became aware of the MR arthrogram showing a recurrent tear he modified his rating for the left knee to 16 percent to the left lower extremity. Dr. Murati referenced *The Guides* as a starting point and used his own medical expertise to modify the ratings in *The Guides* to reflect what he believed to be the nature of Claimant's impairment. There is no evidence to counter Dr. Murati's findings included in his rating. Claimant has had ongoing complaints in her left knee and there is no evidence to conclude Dr. Murati's findings do not reflect those complaints. Dr. Murati's

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<sup>4</sup> See *Johnson v. U.S. Food Service*, 312 Kan. 597, 478 P.3d 776 (2021).

<sup>5</sup> See *Weaver v. Unified Government of Wyandotte County*, 63 Kan. App. 2d 773, 539 P.3d 617 (2023).

rating and methodology are more credible. His rating appears to be based on a better understanding of Claimant's course of treatment and a MR arthrogram showing a recurrent tear.

It is found and concluded Claimant has a 16 percent impairment to the left knee.

## **2. Claimant is entitled to future medical treatment.**

K.S.A. 44-510h(e) states:

It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

Dr. Murati opined Claimant will require future medical treatment such as physical exams, physical therapy, diagnostic testing medications and quite possibly a knee replacement.

Dr. Grantham conceded due the MR arthrogram showing a recurrent tear Claimant might need possible treatment like an arthroscopic procedure to cure and relieve the effect of her injuries.

By the preponderance of the medical evidence it is found and concluded Claimant is entitled to future medical treatment upon proper application.

## **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board the Award of ALJ Brian Brown dated April 29, 2024, is modified.

Claimant has a 16 percent impairment to the left lower extremity. Claimant is entitled to 32 weeks at the rate of \$467.59 or \$14,962.88. This amount is immediately due and owing as of September 30, 2024, less any amounts previously paid.



**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2024.

\_\_\_\_\_  
BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: (Via OSCAR)

William L. Phalen, Attorney for Claimant  
Brenden W. Webb, Attorney for Respondent and its Insurance Carrier  
Hon. Brian Brown, Administrative Law Judge