

Case: *City and Borough of Juneau vs. Calli E. Olsen*, Alaska Workers' Comp. App. Comm'n Dec. No. 185 (August 21, 2013)

Facts: Calli Olsen (Olsen) worked as an operator in the City and Borough of Juneau's (CBJ) wastewater treatment facility. She had preexisting arthritis in her right knee that was asymptomatic. On May 17, 2009, Olsen injured her right knee when she twisted and hyper-extended it while walking down stairs at work. Four months later, on September 17, 2009, she injured her right knee again at work. Olsen's doctor recommended an autologous chondrocyte implantation procedure after conservative treatment, including physical therapy and injections, failed to resolve her pain. CBJ disputed its liability for that procedure, asserting that Olsen's knee pain was primarily attributable to the underlying preexisting arthritis, not the work-related incidents.

On January 26, 2010, Dr. Thompson performed an employer's medical evaluation. He stated:

The work activity of 09/17/09 was in a sense the substantial cause of the development of her worsening symptomatology, i.e. . . . increased pain in the patellofemoral joint, but that work activity did not cause the underlying condition. In the sense of "the substantial cause" the work activity did play a significant role in the increase in symptoms, but in my opinion the pre-existing condition[] played the greatest role in bringing about this symptomatology.

. . . .

I believe that . . . the right knee complaints . . . are largely due to the natural progression of the pre-existing disease with the work activities superimposed on the[] pre-existing condition[].

On March 17, 2010, Olsen's doctor, Dr. Bursell, noted he disagreed with Dr. Thompson regarding causation of Olsen's injury. He concluded the work injury caused her current symptoms, stating: "Certainly the underlying degenerative changes are a factor in the ongoing symptoms, but if it were not for the injury she would likely be asymptomatic as she was prior to the injury." After performing surgery on Olsen's knee, Dr. Harrah indicated on August 5, 2010, that Olsen's preexisting condition caused her cartilage abnormality, however, the cause of her pain related entirely to her work injury. Dr. Harrah stated that the timing of Olsen's need for medical treatment was caused by the activity that she did at work.

On February 12, 2011, Olsen saw orthopedic surgeon Dr. Lipon for a second independent medical evaluation. Dr. Lipon diagnosed right knee strain related to her work injury and right knee degenerative changes preexisting her work injury. In Dr. Lipon's opinion, the substantial cause of Olsen's immediate right knee pain and swelling was her work-related strains, however, her current pain symptoms were unrelated to her work injury. Specifically, he concluded that the substantial cause of Olsen's current disability and need for medical treatment was "the normal progression"

of the preexisting degenerative changes in her right knee. He stated that the implantation procedure was unrelated to Olsen's work injury.

The board concluded that Olsen was entitled to medical treatment in the form of the implantation procedure. CBJ appeals.

Applicable law: In 2005, AS 23.30.010 was rewritten to provide in part:

When determining whether or not . . . the need for medical treatment arose out of and in the course of the employment, the board must evaluate the relative contribution of different causes of . . . the need for medical treatment. Compensation or benefits . . . are payable . . . for medical treatment if, in relation to other causes, the employment is the substantial cause of the . . . need for medical treatment.

A well-established principle of Alaska workers' compensation law is that a work-related injury that aggravates, accelerates, or combines with a preexisting condition is compensable, provided that certain criteria are met. *See, e.g., Thornton v. Alaska Workmen's Comp. Bd.*, 411 P.2d 209 (Alaska 1966).

Issue: What showing is required of an employee to prove an "aggravation" claim or a "combination" claim subject to the 2005 amendments to the Act?

Holding/analysis: The board erred by never indicating in its decision whether it considered the incidents at work to have aggravated, accelerated, or combined with her preexisting arthritis to bring about the need for the implantation procedure. In addition, the board did not address the supplementary showing required for "combination" claims. The commission remanded so that the board could apply the correct legal standard to Olsen's claims.

The parties conceded that Olsen attached the compensability presumption and that CBJ rebutted. Consequently the commission's analysis concerns only the third step of the presumption analysis, whether Olsen proved her claim by a preponderance of the evidence. The commission explained the legal standard in light of the 2005 amendments as follows:

Here, it follows that, for Olsen to establish an aggravation claim under the 2005 amendments to the Act, she must show that her employment was the substantial cause in bringing about the need for treatment in the form of the implantation procedure. Second, AS 23.30.010(a) requires the board to evaluate the relative contribution of different causes of the need for medical treatment. Consequently, in the present context, we hold that the board needs to evaluate the relative contribution of the two causes of Olsen's knee pain, the preexisting arthritis and the work incidents. Dec. No. 185 at 17-18.

Moreover, if Olsen's claim is a "combination" one, she must also show that "the need for medical treatment would not have happened but for the work incidents," *id.* at 20; and "reasonable persons would regard the injury as *the substantial cause* in bringing about bringing about the disability or need for medical treatment," *id.* at 19.

Note: This decision replaced and superseded Dec. No. 184. The Alaska Supreme Court issued an opinion on a separate issue in this case, whether the employer was entitled to a stay of medical benefits, Op. No. 6780 (May 3, 2013).