

Brinson-Wagner, Janice

SUBSEQUENT CONDITION TRACEABLE TO ORIGINAL INJURY

Aggravation by treatment

The consequences of treatment for an industrial injury are considered to be part and parcel of the injury itself. But where treatment is required to treat a non-industrially related condition that previously impeded recovery of an industrially related condition, and the worker's industrially related condition is fixed and stable, the insurer doesn't have an ongoing responsibility to continue to treat all complications that arise from such a condition.*In re Janice Brinson-Wagner, BIA Dec., 20 27444 (2021)* [Editor's Note: The Board's decision was appealed to superior court under Benton County Cause No. 21-2-01296-03]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: JANICE M. BRINSON-**)
2 **WAGNER**)
3)
4 **CLAIM NO. SB-51895**) **DOCKET NO. 20 27444**
5) **DECISION AND ORDER**

6 In 2008, Janice M. Brinson-Wagner was working as a para-educator with the Kennewick
7 School District when she was injured. A student with autism leaned back in his chair, causing the
8 student and a bar he was working with, to hit Ms. Brinson-Wagner's left leg and ankle. The
9 Department allowed the claim and Ms. Brinson-Wagner had multiple surgeries on her left ankle
10 culminating in left ankle replacement surgery in December 2014. While receiving physical therapy
11 for her ankle, preexisting arthritis in Ms. Brinson-Wagner's left knee was hindering her recovery from
12 the industrial injury. After litigation, this Board issued an order in 2017 in which we held that the
13 industrial injury did not proximately cause or aggravate Ms. Brinson-Wagner's left knee condition.
14 But we held that because the left knee condition was retarding the recovery of her ankle condition,
15 we authorized left knee surgery solely as an aid to her recovery of the ankle condition under
16 WAC 296-20-055. Knee replacement surgery was completed on October 26, 2018, and a second
17 surgery on the left knee was authorized and performed on April 4, 2019.

18 In this appeal, Ms. Brinson-Wagner seeks authorization for a third knee surgery to remove
19 scar tissue resulting from the knee replacement surgery as well as time-loss compensation benefits.
20 Our industrial appeals judge authorized the third surgery under the compensable consequences
21 doctrine as articulated in *Clark County v. Maphet*.¹ The compensable consequences doctrine
22 embodies the principle that the consequences of treatment for a compensable industrial injury are
23 considered to be part and parcel of the injury itself.² Kennewick School District filed a Petition for
24 Review asking us to deny further surgery on the left knee because it is no longer hindering
25 Ms. Brinson-Wagner's recovery from the industrial injury. We hold that because the third surgery is
26 only required to treat a non-industrially related condition that previously impeded recovery of an
27 industrially related condition, and Ms. Brinson-Wagner's industrially related condition is now fixed and
28 stable, the Department doesn't have an ongoing responsibility to continue to treat all complications
29 that arise from such a condition. The Department order closing the claim is **AFFIRMED**.

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¹ *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019).

² *Anderson v. Allison*, 12 Wn. 2d 487 (1942); *Ross v. Erickson Construction Co.*, 89 Wash. 634 (1916); *In re George Gillilan*, Dec'd, BIIA Dec. 24,780 (1967) (A heart attack caused by worry over the physical residuals of an industrial injury is compensable as part of the injury.); *In re Arvid Anderson*, BIIA Dec. 65,170 (1960) (A cardiac arrhythmia caused by the stress of surgical treatment for the direct residuals of the industrial injury is attributable to the industrial injury).

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DISCUSSION

Despite two previous surgeries, Ms. Brinson-Wagner continues to have limited range of motion in her left knee. Her treating orthopedic surgeon, Mark R. Merrell, M.D., is recommending a third, non-arthroscopic surgery to remove scar tissue. All the medical witnesses who testified in this appeal agreed the development of scar tissue is a normal reaction to knee replacement surgery and there is nothing unusual about the scar tissue in Ms. Brinson-Wagner's left knee.

William W. Faloon, Jr., M.D., an orthopedic surgeon who testified on behalf of the School District, agreed Ms. Brinson-Wagner has scar tissue that is restricting the range of motion in her left knee but he did not agree with the recommendation for further surgery out of concern that it might cause more problems. While the motion in her knee wasn't optimal, it was functional and was no longer limiting her ankle function. Anne P. McCormack, M.D., an orthopedic surgeon who also testified on behalf of Kennewick School District, testified that Ms. Brinson-Wagner's left ankle condition is at maximum medical improvement with 30 percent impairment due to the ankle replacement surgery she had in 2014.

In its Petition for Review, Kennewick School District argues that since Ms. Brinson-Wagner's left knee condition is no longer retarding the recovery of her industrially-related left ankle condition they should not have to provide further treatment for the left knee as an aid to recovery. We agree. WAC 296-20-055 specifically states in relevant part "The department or self-insurer will not pay for treatment of an unrelated condition when it no longer exerts any influence upon the accepted industrial condition."³ There is no dispute Ms. Brinson-Wagner's left ankle condition is at maximum medical improvement and the knee condition is no longer retarding its recovery.

In the Proposed Decision and Order, our industrial appeals judge authorized further surgery on the left knee under the compensable consequences doctrine as articulated in *Clark County v. Maphet*.⁴ Under the compensable consequences doctrine, the consequences of treatment for a compensable industrial injury or occupational disease are considered to be part and parcel of the injury itself.⁵ In *Clark County v. Maphet*,⁶ the court held that when an insurer authorizes surgery for a condition under the claim, the insurer accepts responsibility for the condition under the claim. However, we hold that *Maphet* does not apply to conditions treated solely because they are conditions

³ WAC 296-20-055.

⁴ 10 Wn. App. 2d 420 (2019).

⁵ 12 Wn. 2d 487 (1942); 89 Wash. 634 (1916); BIIA Dec. 24,780 (1967); BIIA Dec. 65,170 (1960).

⁶ 10 Wn. App. 2d 420 (2019).

1 retarding recovery and identified as such. *Maphet* applies to conditions that have been
2 administratively accepted because treatment was provided repeatedly for a condition without a
3 segregation order.
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6 But here the condition in need of treatment was not caused by the industrial injury. Rather, as
7 a matter of law, the left knee condition was deemed to be a condition retarding recovery. On June 23,
8 2017, we issued an order in which we held that "Ms. Brinson-Wagner's disabling left knee condition
9 and need for treatment including a total knee replacement resulted from the natural progression of
10 the degenerative arthritis of the knee, which preexisted the industrial injury and was neither
11 proximately caused nor aggravated by the industrial injury." In that order, we also held that
12 "Ms. Brinson-Wagner's disabling left knee condition prevents her from doing some of the therapy and
13 exercises recommended for her accepted left ankle condition, such as bicycling and water therapy,
14 and limits her ability to progress with prescribed therapy for her accepted left ankle condition." And
15 "Ms. Brinson-Wagner's disabling left knee condition is a preexisting unrelated condition that is directly
16 retarding recovery of the accepted left ankle condition, and was in need of treatment, including a total
17 knee replacement."⁷ On June 25, 2020, the Washington State Division III Court of Appeals issued
18 an order in which it upheld this Board's Decision and Order.
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25 A condition retarding recovery is treatment provided for a non-industrially related condition as
26 an aid to recovery from the industrially-related condition(s). It is a separate issue unique to industrial
27 insurance to which the compensable consequences doctrine doesn't apply. WAC 296-20-055 is on
28 point when it states the insurer will not pay for treatment of an unrelated condition when it no longer
29 exerts any influence upon the accepted industrial condition. If we were to require ongoing coverage
30 for conditions retarding recovery without limitation, the insurer could end up accepting any matter of
31 conditions that impact recovery from industrial injuries such as cancer and heart disease. Once the
32 retardation from recovery is complete, as it is here, there is no industrially-related nexus between
33 further treatment for the condition previously retarding recovery and the condition caused by the
34 industrial injury.
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40 The School District objects to the payment of further time-loss compensation benefits because
41 Ms. Brinson-Wagner's inability to work is due to her non-industrially related knee condition, not the
42 industrially related ankle condition. Ms. Brinson-Wagner continued to work for the Kennewick School
43 District after her ankle surgery and up to the time of her knee replacement surgery in a sedentary
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47 ⁷ 6/23/17 Decision and Order, at 3.

1 position as a detention monitor. She did not return to work after her knee replacement surgery and
2 instead elected to voluntarily retire at age 63. Ms. Brinson-Wagner testified that prior to her knee
3 replacement surgery she turned in her resignation as she knew she would not be going back to work
4 after the surgery.⁸ She made this decision prior to knowing the outcome of the surgery. Ms. Brinson-
5 Wagner acknowledged that if it was just for her ankle condition, she would be able to work.⁹
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9 Dr. Merrell was the only witness to testify to Ms. Brinson-Wagner's inability to work between
10 October 26, 2018, and May 11, 2020. According to Dr. Merrell her inability to work was due solely to
11 the condition of her left knee following total knee replacement surgery.
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13 Dr. Faloon testified Ms. Brinson-Wagner would have been able to continue working after her
14 total knee replacement surgery in the same sedentary position she'd been working in prior to the
15 surgery. It was Dr. McCormack's opinion Ms. Brinson-Wagner would have been able to return to
16 work within three months after her knee replacement surgery if the job was sedentary and within six
17 months otherwise. It was her opinion Ms. Brinson-Wagner could perform her job of injury as a para-
18 educator when considering only the industrially-related ankle condition.
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22 Kyle V. Pletz is a vocational consultant who performed a forensic review of Ms. Brinson-
23 Wagner's claim at the request of the employer. It was his opinion that Ms. Brinson-Wagner was
24 employable between October 26, 2018, and May 10, 2020, because she was able to work prior to
25 knee replacement surgery so it wasn't the industrially-related ankle condition that was the reason for
26 her inability to work. The left knee condition became disabling after the industrial injury and was not
27 proximately caused nor aggravated by the industrial injury so therefore it was not a basis for her
28 inability to work. The left knee condition became disabling after the industrial injury and was not
29 proximately caused nor aggravated by the industrial injury so therefore it was not a basis for her
30 inability to work under the claim.
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32 WAC 296-20-01002 states that "Full-time [sic] loss compensation will be paid when the worker
33 is unable to return to any type of reasonably continuous gainful employment as a direct result of an
34 accepted industrial injury or exposure." Here, Ms. Brinson-Wagner's inability to work is due solely to
35 the unrelated left knee condition. As a result, she is not entitled to further time-loss compensation
36 benefits.
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40 Lastly, Ms. Brinson-Wagner did not provide evidence establishing that she was entitled to an
41 increased permanent partial disability award or that she was permanently and totally disabled as a
42 result of conditions proximately caused by the industrial injury.
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46 ⁸ 1/22/21 Tr. at 16.

47 ⁹ 1/22/21 Tr. at 22.

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DECISION

In Docket No. 20 27444, the claimant, Janice M. Brinson-Wagner, filed an appeal with the Board of Industrial Insurance Appeals on May 22, 2020, from an order of the Department of Labor and Industries dated May 11, 2020. In this order, the Department closed the claim with time-loss compensation paid through January 4, 2015 and a permanent partial disability award equal to 30 percent of the left leg above the knee joint with short thigh stump (3" or below the tuberosity of ischium). This order is correct and is affirmed.

FINDINGS OF FACT

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1. On September 23, 2020, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
 2. Janice M. Brinson-Wagner sustained an industrial injury on October 27, 2008, when her left leg and ankle were hit by a student falling off a chair resulting in left knee contusion, temporary exacerbation of left knee arthrosis, and left ankle sprain and strain. As a result of the industrial injury, Ms. Brinson-Wagner had a total left ankle arthroplasty.
 3. On June 23, 2017, this Board issued an order in which we held that "Ms. Brinson-Wagner's disabling left knee condition and need for treatment including a total knee replacement resulted from the natural progression of the degenerative arthritis of the knee, which preexisted the industrial injury and was neither proximately caused nor aggravated by the industrial injury." In that order, this Board also held that "Ms. Brinson-Wagner's disabling left knee condition prevents her from doing some of the therapy and exercises recommended for her accepted left ankle condition, such as bicycling and water therapy, and limits her ability to progress with prescribed therapy for her accepted left ankle condition." And "Ms. Brinson-Wagner's disabling left knee condition is a preexisting unrelated condition that is directly retarding recovery of the accepted left ankle condition, and was in need of treatment, including a total knee replacement."
 4. On June 25, 2020, the Washington State Division III Court of Appeals issued an order in which it upheld this Board's Decision and Order referenced in Finding of Fact Number 3.
 5. As of May 11, 2020, Ms. Brinson-Wagner's conditions proximately caused by the October 27, 2008 industrial injury were fixed and stable and did not need further proper and necessary treatment.
 6. The surgery recommended for Ms. Brinson-Wagner's left knee is not for a condition proximately caused or aggravated by the industrial injury and the left knee condition no longer exerts any influence upon the accepted left ankle condition.

- 1 7. Ms. Brinson-Wagner is a 66-year-old woman with a high school diploma
2 and some college education. She has worked as a nuclear operator, a
3 shift supervisor, and has done clerical office work. She has held jobs as
4 a field laborer, receptionist, and in retail sales. She has preexisting
5 degenerative arthritis in her left knee.
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- 7 8. Ms. Brinson-Wagner is able to work in the sedentary to light work category
8 as a detention monitor and her job of injury as a para-educator.
- 9 9. Ms. Brinson-Wagner was able to perform and obtain gainful employment
10 on a reasonably continuous basis from October 26, 2018, through
11 May 11, 2020, when considering conditions proximately caused or
12 aggravated by the industrial injury.
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- 14 10. On May 11, 2020, Ms. Brinson-Wagner had a permanent partial disability
15 proximately caused by the industrial injury equal to 30 percent of the
16 amputation value of the left leg above knee joint with short thigh stump
17 (3" or below the tuberosity of ischium).

18 **CONCLUSIONS OF LAW**

- 19 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
20 and subject matter in this appeal.
- 21 2. Janice M. Brinson-Wagner's condition(s) proximately caused by the
22 industrial injury were fixed and stable as of May 11, 2020, and she is not
23 entitled to further treatment. RCW 51.36.010.
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- 25 3. The compensable consequences doctrine articulated in *In re Arvid*
26 *Anderson*, BIIA Dec., 65,170 (1986) and *Clark County v. Maphet*, 10 Wn.
27 App. 2d 420 (2019) does not apply to conditions treated because the
28 condition is retarding recovery of a separate industrially related condition
29 under WAC 296-20-055.
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- 31 4. The third knee surgery sought by Ms. Brinson-Wagner is not a
32 compensable consequence of the industrial injury under *In re Arvid*
33 *Anderson*, BIIA Dec., 65,170 (1986) and *Clark County v. Maphet*, 10 Wn.
34 App. 2d 420 (2019).
- 35 5. Ms. Brinson-Wagner was not a temporarily totally disabled worker within
36 the meaning of RCW 51.32.090 from October 26, 2018, through May 11,
37 2020.
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**Addendum to Decision and Order
In re Janice M. Brinson-Wagner
Docket No. 20 27444
Claim No. SB-51895**

Appearances

Claimant, Janice M. Brinson-Wagner, by Smart Law Offices, per Marcus R. Henry
Self-Insured Employer, Kennewick School Dist. #17, by Gress Clark Young & Schoepper, per
James L. Gress

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order issued on May 25, 2021, in which the industrial appeals judge reversed and remanded the Department order dated May 11, 2020.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.