

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2017 MTWCC 17

WCC No. 2017-3988

CHARLOTTE SUZOR

Petitioner

vs.

INTERNATIONAL PAPER CO.

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Summary: Petitioner alleges that the injuries to her knees, for which Respondent previously accepted liability, caused one of her knees to give way while she was inside her home, which, in turn, caused her to fall and break her right wrist. She seeks medical benefits for her broken wrist. Respondent denied liability for her broken wrist, relying on claimant's medical record which states she fell because she slipped on ice.

Held: Respondent is not liable for claimant's right-wrist fracture because Petitioner failed to prove that her fall occurred as a result of her knee instability. Petitioner's testimony did not convince this Court that her medical record was incorrect.

¶ 1 The trial in this matter was held on September 12, 2017, in Missoula. Petitioner Charlotte Suzor was present and represented by Rex Palmer. Leo Ward represented Respondent International Paper Co. (International Paper).

¶ 2 Exhibits: This Court admitted Exhibits 12 through 15, 17, and 22 through 25 without objection. This Court overruled Liberty's disclosure and exchange objections to Exhibits 1 through 11 and 16 and admitted them. Suzor withdrew Exhibits 19, 20, and 21. There is no Exhibit 18 because Suzor did not offer any exhibit for impeachment or rebuttal.

¶ 3 Witnesses and Depositions: Charlotte Suzor and Joan Bond-Deschamps, PA-C, were sworn and testified at trial.

¶ 4 Issues Presented: The following issue is before this Court:

Is International Paper liable for medical benefits for Suzor's January 2016 right-wrist injury?

FINDINGS OF FACT

¶ 5 This Court finds the following facts based on a preponderance of the evidence.

¶ 6 Suzor suffered an industrial accident on April 1, 1982, which resulted in injuries to her knees.

¶ 7 International Paper accepted liability for her claim.

¶ 8 As a result of her 1982 injuries, Suzor has suffered instability in her knees resulting in falls, which she reported to her healthcare providers.

¶ 9 In 2009, as a result of one of these falls, Suzor broke her hip. Michael W. Woods, MD, at Missoula Bone & Joint explained:

This patient had a fall that caused this injury in late February/early March. The fall was due to a giving way episode of her left knee. The left knee is chronically unstable because she had a previous patellectomy from a previous work related injury. But for this unstable left knee, which caused her to fall, she would not have had this right hip injury. Therefore in my opinion there is a work-related causation through that line of reasoning.

International Paper accepted liability for her hip replacement surgery.

¶ 10 In January 2016, Suzor fell and broke her right wrist.

¶ 11 On February 1, 2016, Suzor saw a nurse and Joan Bond-Deschamps, PA-C, at Missoula Bone & Joint. Bond-Deschamps has known Suzor since 2004, and knew that Suzor has a long history of unstable knees due to her patellectomy. The history section of Bond-Deschamps' report states:

Charlotte is a pleasant . . . female who is well known to our clinic after her previous left knee arthroscopy and right total hip arthroplasty done by Dr. Woods and myself. The patient is self-referred to the Urgent Care Clinic today for an injury she sustained to her right wrist. **The patient states she fell 1 week ago Saturday after slipping on some ice.** She fell on her outstretched hand. She states she actually hit both hands but is having primarily pain and swelling in the right wrist. She reports a "lump" that developed shortly thereafter. The patient denies numbness or tingling and

reports pain with extreme wrist extension, heavy gripping, and grasping things. The patient denies other active complaints or concerns.¹

Bond-Deschamps' handwritten notes from that day just state that Suzor fell on an outstretched hand. Bond-Deschamps placed a splint on Suzor.

¶ 12 Thereafter, Suzor treated with Lou Westenfelder, PA-C, at Missoula Bone & Joint, who placed her in a cast. His records are detailed and concise. However, none of his medical records say anything about the cause of Suzor's fall.

¶ 13 International Paper denied liability for Suzor's wrist injury. Suzor received bills from Missoula Bone & Joint and Hands in Motion Occupational Therapy in the spring and summer of 2016, and knew that International Paper had denied liability for her wrist injury. She forwarded the bills to her attorney, and indicated she thought her wrist injury should be covered by International Paper.

¶ 14 On September 27, 2016, Suzor's attorney, who has been her attorney at all times relevant to this case, wrote a demand letter to the attorney who represented International Paper in Suzor's bad-faith case.² In relevant part, the letter states:

As you are well aware, Ms. Suzor has chronically unstable knees as the direct result of her 1982 injury at work. **On January 30, 2016, her knee gave away and she fell on ice fracturing her right wrist.**³

Suzor's attorney asked that International Paper pay medical benefits for her broken wrist and honor his *Lockhart* lien.⁴

¶ 15 On January 10, 2017, Bond-Deschamps received a message stating that Suzor had called and indicated her February 1, 2016, medical record was incorrect; Suzor stated she had actually fallen inside her home, and not on ice. Bond-Deschamps spoke to Westenfelder, who did not recall anything about the cause of Suzor's fall. Bond-Deschamps also spoke to Dr. Woods, who told her to make a chart note of what Suzor had said. Thus, Bond-Deschamps wrote a chart note stating:

¹ Emphasis added.

² See *Suzor v. Int'l Paper Co.*, 2016 MT 344, 386 Mont. 54, 386 P.3d 584.

³ Emphasis added.

⁴ See *Lockhart v. New Hampshire Ins. Co.*, 1999 MT 205, 295 Mont. 467, 984 P.2d 744 (holding that medical benefits recovered due to the efforts of an attorney in a workers' compensation case are benefits to which an attorney fee lien can attach).

Charlotte called in today with some new information regarding her wrist injury she sustained in January of 2016. **The patient states that she actually had a slip and fall inside her home, not on ice.** Charlotte sustained a scaphoid fracture, which was treated initially by myself through our Urgent Care Clinic and the patient was referred on for definitive treatment with Lou Westenfelder, P.A.⁵

¶ 16 At trial, Suzor testified that she did not slip and fall on ice. She testified her knee gave way and she fell in the hallway inside her home. She denied ever telling anyone at Missoula Bone & Joint that she slipped and fell on ice.

¶ 17 Bond-Deschamps has no independent recollection of Suzor's February 1, 2016, appointment, other than that Suzor had an unusual hematoma on her wrist. Bond-Deschamps does not remember whether she took Suzor's history, or whether her nurse took Suzor's history and relayed it to her. Due to the passage of time and employee turnover, Bond-Deschamps does not remember who her nurse was that day. Bond-Deschamps thinks a miscommunication occurred either between herself and Suzor, or between herself and her nurse. However, the only basis she has for thinking a mistake was made or a miscommunication occurred is that she believes Suzor's assertion that she never said she slipped and fell on ice.

Resolution

¶ 18 International Paper argues that the evidence shows Suzor did not fall because her knee gave way; instead, it argues that she fell because she slipped on ice. Suzor maintains that her February 1, 2016, medical record incorrectly noted the cause and location of her fall; she maintains that her knee gave way and she fell inside the hallway of her home. For two reasons, Suzor's testimony fails to prove it is more likely than not that her fall occurred because her knee gave way.

¶ 19 First, while this Court knows that medical providers occasionally make mistakes in their records, Suzor did not offer sufficient credible evidence to persuade this Court that Bond-Deschamps made a mistake regarding the cause or location of Suzor's fall in the medical record from February 1, 2016, or that a miscommunication occurred. Bond-Deschamps understands the importance of accurate records. Bond-Deschamps' record from February 1, 2016, is detailed and concise. Suzor admitted every other statement in the history portion of her medical record is correct. At the time, Bond-Deschamps had known Suzor for approximately 12 years and knew of Suzor's unstable knees and her resulting falls. Suzor did not offer details such as whether she gave her history to Bond-Deschamps or to Bond-Deschamps' nurse, or offer other testimony to assist this Court in

⁵ Emphasis added.

determining whether Bond-Deschamps or her nurse made a mistake, or whether there was a miscommunication. While Bond-Deschamps was a credible witness, she did not remember what was said or what occurred during Suzor's appointment, and did not have sufficient grounds to conclude that a mistake had been made or that a miscommunication had occurred.

¶ 20 Second, there are too many inconsistencies in the evidence for this Court to find it more likely than not that Suzor fell inside her home because her knee gave way. Approximately eight months after Suzor's fall, her attorney sent a demand letter stating that Suzor fell "on ice." Although Suzor's attorney indicated that she fell "on ice" because her knee gave way, the statement that she fell "on ice" cannot be harmonized with Suzor's trial testimony that she fell in the hallway of her home. And, when Suzor called Missoula Bone & Joint nearly one year after her fall to "correct" her medical record, she did not attribute her fall to her knee giving way; rather, according to this record, she stated that she had a "slip and fall" inside her home and not on ice. Suzor's statement that she had a "slip and fall" cannot be reconciled with her testimony that her knee gave way.

¶ 21 Accordingly, after weighing the evidence under the preponderance of the evidence standard, this Court finds that Suzor's January 2016 fall did not occur because her knee gave way.

CONCLUSIONS OF LAW

¶ 22 This case is governed by the 1981 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Suzor's accident.⁶

¶ 23 It is well established that when the sequelae of an industrial injury causes an injury or disease to another body part, the insurer is liable for the injury or disease to the other body part.⁷

¶ 24 Suzor bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.⁸ Here, she did not do so. Suzor's testimony was insufficient to convince this Court under the preponderance of the evidence standard that

⁶ *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

⁷ See, e.g., *Pulliam v. Liberty Mut. Ins. Co.*, 1994 MTWCC 117 (ruling that insurer was liable for claimant's back injury caused by fall, which was caused by her leg buckling, which was a result of her industrial injury); *Uffalussy v. St. Patrick Hosp. & Health Scis. Ctr.*, 2007 MTWCC 45, ¶¶ 70-72 (ruling that insurer was liable for claimant's cognitive problems because her industrial injury caused balance and gait difficulties, which, in turn, caused her to fall and hit her head); *Lanes v. Montana State Fund*, 2007 MTWCC 39, *aff'd*, 2008 MT 306, 346 Mont. 10, 192 P.3d 1145 (ruling that insurer was liable for claimant's right-knee condition, which was caused by overloading due to his left-knee occupational disease).

⁸ *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 201, 598 P.2d 1099, 1105-06 (1979) (citations omitted).

she fell as a result of her knee giving way. Accordingly, International Paper is not liable for medical benefits for her right-wrist fracture.

JUDGMENT

¶ 25 Suzor is not entitled to medical benefits for her January 2016 right-wrist fracture.

¶ 26 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED this 27th day of September, 2017.

(SEAL)

/s/ DAVID M. SANDLER

JUDGE

c: Rex Palmer
Leo S. Ward

Submitted: September 12, 2017