

Workers' Compensation Appeal Tribunal

Decision #190

Claim No.: 3000-1406

Date of Notice of Appeal: June 29, 2010

Date of Oral Hearing: October 12, 2011

Date of Decision: November 8, 2011

Appeal Committee Members appointed under s. 64 (1) of the *Workers' Compensation Act*, S.Y. 2008, c. 12

Committee Chair:	H. Leenders
Member representative of employers:	H. Hermanson
Member representative of workers:	M. McCullough

In attendance: The Worker
The worker's representative – Rebecca Anderson
Observer – Mark Hill
Recorder - Vernna Johanson

Location: 456 Range Road
Whitehorse, Yukon Territory

Introduction

The worker is the owner/proprietor of several companies. On October 9, 2007 he filed a claim for compensation for an injury to his right knee which occurred on September 28, 2007 while at work. Yukon Workers' Compensation Health & Safety Board (the "board") did not accept the worker's claim for compensation as they found he did not suffer a work-related injury.

The Hearing Officer's Decision

The hearing officer rendered a decision on December 31, 2008 agreeing with the adjudicator's January 25, 2008 decision that the incident on September 28, 2007 was a recurrence of a non-compensable pre-existing condition and there was no evidence to show that the bucket handle tear was work-related.

Decision

The worker's appeal is allowed. The hearing officer's December 31, 2008 decision is reversed.

Jurisdiction

- [1] On June 29, 2010 the workers' advocate office, representing the worker, filed an appeal of the hearing officer's decision with the tribunal under s. 53 of the *Workers' Compensation Act*, S.Y. 2008. The review (appeal) must be determined according to the *Workers' Compensation Act*, S.Y. 2008, c. 12. Section 65(1) of the *Act* gives the appeal tribunal jurisdiction to hear and decide this appeal.
- [2] Compensation entitlement decisions are made pursuant to legislation in place at the time of injury. The worker filed a claim for an injury which occurred on September 28, 2007. In this instance the *Workers' Compensation Act*, R.S.Y. 2002 as amended to the date of injury should be used to determine issues of entitlement.
- [3] The board provided the following policies to the tribunal as relevant to this appeal under the authority of section 64 (4) of the 2008 *Act*:
 - Policy IN-03, Transition Policy – *Workers' Compensation Act 2008*
 - Policy CL-47, Pre-existing Conditions, effective 94-04-01
 - Policy GC-07, Role of the Medical Consultant, effective January 26, 1995
 - Policy CL-04, Claims Involving Alcohol or Drugs, effective January 1, 1993
 - Policy CL-42; Arising Out of and in the Course of Employment, effective 93-11-17.
- [4] The worker attended the hearing and testified by affirmation. He was represented by the deputy workers' advocate. The proceedings were recorded.
- [5] The appeal committee considered the following:
 - the worker's testimony
 - the workers' advocate's submission

- the aforementioned policies
- the entire claim record No. 3000-1406 and 2002-0471 as provided by the board.

[6] On August 29, 2011 the workers' advocate submitted a June 10, 2011 Consultation Report by an orthopaedic specialist. The appeal committee reviewed the document and determined it did not fit the criteria for new evidence as contained in Policy AP-03, New Evidence at Reviews & Appeals.

Background and Evidence

We will be referring to medical professionals by initial only in order to maintain confidentiality.

- [7] The Worker's Report of Injury/Illness, October 9, 2007, states the worker/owner twisted and injured his right knee on September 28, 2007 while trying to lift a rock out of a hole.
- [8] The worker attended Whitehorse General Hospital Emergency Department on September 28, 2007 and was examined by Dr. A., general practitioner. Dr. A. reported subjective complaints as a history of patellar dislocations in the past. His findings were: "right patellar partial dislocation laterally, with conscious sedation x three attempts, patella reduced." Dr. A. advises the worker return on October 18 for a referral to an orthopaedic specialist "for fixation of patellar tracking." He notes, "No longer term sequelae anticipated. No time loss from work except today."
- [9] The worker is examined by Dr. B., general practitioner, on September 29, 2007. His progress report notes a diagnosis of "soft tissue injury knee (right)." Complicating factors are, "similar episodes in past, tibial plateau fracture."
- [10] Dr. A.'s October 18, 2007 Encounters Report states he saw the worker that day in follow-up. The worker reported that his knee has "subluxed 5 times in 4 months." When Dr. A. saw him in the Emergency Department, the worker's knee was completely dislocated to the right. Dr. A. reports that although the worker has returned to work, he recommends an expedited referral to an orthopaedic surgeon. He suggests the board orchestrate this through their "sources in Calgary". Dr. A. comments that he concurs with the worker that it would not be safe to climb ladders or be on rooftops at the present time.
- [11] An adjudicator e-mails the worker on November 1, 2007 inquiring about prior knee dislocations that Dr. A. mentioned. The worker's e-mail response states he did not seek medical attention previously as he was always able to correct the situation by himself, until this latest event and, that each time it happened previously, it was always while working on a roof.
- [12] The board's chief medical consultant issues a report on November 15, 2007 after reviewing this claim file as well as a previous claim of the worker's: Claim No. 2002-0471. His "Impression" notes the previous trauma to the worker's knee in 2002 "was significant". The medical consultant states that a single traumatic injury could result in ongoing problems; however in reviewing the 2002 claim, "it is clear that there was extensive capsular damage." He notes that lifting a rock would not be expected to produce a patellar dislocation in the absence of an underlying structural deformity. He finds "from a medical perspective, it would be reasonable and probable to relate the ongoing subluxations to the 2002 trauma. . . ."

“Currently the diagnosis is recurrent subluxation and dislocations of the patella.”

[13] The adjudicator notifies the worker by letter dated November 21, 2007 that she cannot link his symptoms to his employment and his claim for compensation is denied.

[14] The worker attended Dr. C., orthopaedic specialist, on December 3, 2007 for an assessment. Dr. C. reports in part:

[The worker] has evidence of right knee PCL insufficiency and an old healed lateral tibial plateau fracture with very slight lateral plateau depressions. He now has a lateral meniscal tear with a locked knee secondary to a twisting injury at work.

Dr. C. recommends “urgent knee arthroscopy and meniscectomy and debridement.”

[15] An Amended Operative Report dated December 4, 2007 by Dr. C. states:

The intraoperative findings in this case has demonstrated an acute large bucket handle tear of the lateral meniscus with displacement into the intercondylar notch leading to a locked knee. His locked knee has been present since his twisting injury in a full crouch position while working on a roof. Prior to this, he had no significant symptoms in relation to his lateral compartment and had no previous history of lateral meniscal tear. As a result, while he has had a previous left [should be right] knee surgery, the current locked knee injury is specifically related to an acute lateral meniscal tear and is, as a result, clearly related to his work injury of approximately 2 months ago. As a result, I have suggested he follow up with WCB Yukon for the purposes of further management of this injury.

[16] The worker attends Dr. A. on December 18, 2007. Dr. A.’s Encounters Report of the same day states that he originally saw the worker in the Emergency Department with a locked knee. At that time, the worker may have been suffering from a recurrent subluxing patella. Dr. A. notes that after reviewing the worker’s records and Dr. C.’s report, “it would appear that it is quite possible that this patient actually suffered an acute bucket handle tear resulting in a locked knee.” Dr. A. supports Dr. C.’s position that the worker suffered an acute injury and it should be covered by the board. He states, “I would support this position given the clinical presentation of the patient with an acutely painful locked knee without an obvious dislocated patella, could easily have been an acute meniscal tear.”

[17] On December 19, 2007 the worker completes and files a second Workers’ Report of Injury/Illness indicating the date of injury as December 4, 2007 noting his right “knee was operated on to correct previously reported injury”.

[18] The chief medical consultant reports on January 11, 2008. Following are excerpts from his report:

Lifting a heavy object and twisting while in a full crouched position could produce an acute bucket handle tear. The tear can lock the knee and ultimately require the surgery performed by Dr. C.

I would concur with Dr. C. that someone with no previous knee complaints, who suddenly developed an acutely painful locked knee it would be reasonable to assume that, the activity at the time could produce the meniscal tear. This would be unmistakable and the person should know whether or not they were on the ground lifting a rock or sitting on a roof when it first happened.

- [19] The medical consultant provides an additional report on January 25, 2008 after reviewing Dr. C.'s pre-operative December 3, 2007 assessment. He states that Dr. C. identified a posterior cruciate ligament laxity and noted the x-rays identify early degenerative roughening of the lateral tibial plateau as well as a small medial osteophyte. The medical consultant notes that at the time of the December 4, 2007 surgery, the worker had a locked right knee with a large complex bucket handle tear. He repeats that "the first episode is generally the most clinically significant" and it would be reasonable and probable to conclude that the worker's degenerative changes are related to the previous trauma suffered in 2002.
- [20] On May 16, 2008 the worker attends Dr. C., orthopaedic specialist. Following are excerpts from Dr. C.'s Consultation Report:

He is now approximately six months following right knee arthroscopy and partial lateral meniscectomy for a large bucket handle tear causing a locked knee.

Assessment and Recommendations: [The worker] had an acute right locked knee secondary to a hyperflexion injury caused while working up on a roof. His right knee was deeply flexed and internally rotated when he immediately felt pain in the posterolateral knee and associated locking. It took approximately six months until seeing me for consultation and then surgery at which point it was clearly proven that he had a displaced bucket handle lateral meniscal tear.

It is inconceivable to me as to how this injury could not be considered to be work place related.

I acknowledge that he did have a previous tibial plateau fracture. Nevertheless he was able to return to activities and full work load. While such an injury may lead to stiffness around the knee, and perhaps even some joint roughening, it did not cause his bucket handle tear. Even if one might postulate that he would have been at slightly higher risk for developing a meniscal tear simply because of the presence of a preceding knee injury, it is clear that the meniscal tear is a new injury that came on in somebody who may have been at worst as slightly higher risk. In my opinion, this does not mean that it is a part and parcel of the same injury.

I do not believe I can make my opinion on this matter any more clear. It is my strong opinion that he has sustained a new acute injury to the lateral meniscus of his knee in a work-related accident.

- [21] The worker, through his representative, requests a hearing officer review. The hearing officer asks for further information from the worker's representative. On December 12, 2008 the worker's representative writes to the hearing officer clarifying some of the typographical/dictation errors found in Dr. C.'s December 3, 2007 report. Most of the corrections deal with right vs. left knee, whether the worker is "able" or "unable" to straighten his leg and where the worker was, i.e. on the roof when his knee locked and he could not straighten his leg.
- [22] The hearing officer asks the medical consultant on December 15, 2008 to comment on the injury as described by the worker in the spring of 2007. He also questions whether or not the mechanism of injury and subsequent dislocations the worker suffered, could be reasonably linked to the damage done in a motor vehicle accident in 2002. [Note: The worker applied for but was denied compensation for this claim.]
- [23] On December 23, 2008 the medical consultant provides 53 pages of information from a fact sheet entitled, "Meniscus Disorders, Knee" by the Yukon Medical Association and YWCHSB and from a website entitled, "UpToDate": After reviewing these documents the hearing officer renders a decision that states in part:

The evidence showed that the knee locked sometime after October 18, 2007 and before December 3, 2007. There was no evidence to show that a work-related incident caused the locking, and it was more likely that the knee condition was degenerative and related to the pre-existing condition due to the 2002 auto trauma.

Conclusions:

The incident on September 28, 2007 was a recurrence of a non-compensable pre-existing condition.

There was a bucket handle tear but there was no evidence to show that it was work-related.

I agree with the adjudicator's decisions that the right knee condition was not work-related.

The Worker's Testimony

- [24] The worker explained how the injury happened. He said he was working on a chain link fence in a fairly rocky area of the city. He needed to install a fence post for a gate for the fence. He said the fence post had to go in a specific in place as there was nowhere else to put it. There was a rock a bit bigger than a football in the fence post hole. The worker said he sat down beside the hole, with his right leg tucked underneath him. He reached down to pull the rock

out of the hole and his “knee popped out”. His knee was locked and he could not straighten it out. He immediately had a co-worker drive him to the hospital.

- [25] The worker testified the first incident of this sort happened in May when he was doing a roofing job. He said his knee locked but he was able to manipulate it and straighten it. This happened 4 or 5 times throughout the summer until the final incident in September. Usually he could pop it back into place.
- [26] The worker was diagnosed in 2002 with a tibial plateau fracture after a motor vehicle accident. He explained the treatment consisted of wearing a brace for about 6 weeks and the recovery was fairly rapid. He testified that within 6 to 8 weeks he was completely back to normal. No symptoms arose between the time of the incident in 2002 and the ones in 2007.
- [27] He said he handles all aspects of work for his company from paperwork to heavy lifting. He is involved in roofing, chain link fencing, duct cleaning, and some chimney cleaning. He has not undertaken any activities either at work or outside of work which cause the same symptoms that he had on September 28, 2007. Currently, he said he is doing pretty good except he does not trust his leg anymore. He is concerned that it will give out on him. He is very careful with it.
- [28] The worker testified that he did not seek medical treatment or take medication for his knee until it became an emergency and he could not straighten his leg out. Until the final dislocation, all previous incidents occurred while he was on a roof working and he could always manipulate his knee back into place. With each of the incidents the pain got progressively worse but the final incident was very painful and he needed assistance to get to the hospital.

The Advocate's Submission

[29] The advocate referenced the following policies:

- CL-42, Arising Out of and In the Course of Employment
- CL-47, Pre-existing Conditions
- CL-54, Merits and Justice of the Case

She also provided excerpts from Terence G. Ison's, *Workers' Compensation in Canada*, 2nd ed.

- [30] The advocate says Policy CL-42 provides adjudicators with guidelines for assessing whether or not a disability is work-related. She says the Worker's Report of Injury/Illness confirms that the injury the worker was being treated for occurred at a time, place and under circumstances consistent with his employment. The worker clarified any questions which arose during consideration of the work-relatedness of his claim. The incident happened on September 28, 2007 while he was conducting work duties for his company. His injury was severe enough that he needed to be taken to the hospital by his co-worker.
- [31] The advocate says the adjudicator relied on the November 15, 2007 medical consultant's report. The medical consultant related the worker's ongoing subluxations to the 2002 trauma. This decision was based on the initial diagnosis of subluxation or dislocation of the patella. The advocate contends more weight should have been given to Dr. C.'s December 4, 2007

Operative Report which changed the diagnosis to “acute large bucket handle tear.” The advocate says Dr. C. noted the worker’s current locked knee injury is specifically related to an acute lateral meniscal tear and “clearly related to his work injury of approximately 2 months ago.”

- [32] She submits the adjudicator either missed or failed to evaluate the new diagnosis of acute bucket handle tear. The advocate submits that the adjudicator’s January 25, 2008 decision refers to the injury as a right knee dislocation which occurred on December 4, 2007. This is not only an incorrect date of injury but the new diagnosis was not considered in the adjudication of the claim.
- [33] The advocate notes that each case must be decided on its own merits and justice. Decision-makers must assess and weigh all relevant evidence and when there is doubt on an issue and the disputed possibilities are evenly balanced, the issue must be resolved in the favour of the worker as per section 6 of the *Act*. In this case, the advocate submits, the opinion of Dr. C., an orthopaedic specialist, should be preferred to the opinion of a general practitioner. Dr. C. performed surgery on the worker’s knee; he examined the worker on 3 separate occasions. In addition, the worker’s family physician treated the worker throughout the injury and recovery period. The medical consultant did not examine nor speak with the worker on any occasion.
- [34] She says the worker testified how his knee injury progressed from the spring of 2007 to the incident on September 28, 2007, leaving him unable to walk. Although he suffered an injury to the right knee in 2002, between then and the 2007 incident, he had no significant symptoms which required him to seek medical treatment. This is supported by the lack of medical reporting and the fact that he was able to continue operating his business.
- [35] The advocate submits Dr. C. clearly did not consider the 2002 knee injury as being significant to the worker’s condition in 2007. Dr. C. acknowledged the worker did have a previous tibial plateau fracture but he was able to return to activities and a full work load. Dr. C. clearly stated that such an injury may lead to stiffness around the knee and possibly some joint roughening, it did not cause the bucket handle tear. However, the medical consultant and adjudicator found the worker suffered a recurrence of a non-compensable pre-existing condition. If this is the case, the advocate submits, Policy CL-47 applies.
- [36] She maintains that whether the injury is determined to be a new injury, or an aggravation of a pre-existing condition, the board is responsible for providing the worker with the compensation he is entitled to under the *Act* and policies. The worker suffered a work-related injury. The advocate submits there is no objective medical evidence to show the worker did not suffer a work-related injury (contrary evidence) and by applying the balance of probabilities and the presumption clause in the legislation, it is only fair and reasonable to view this claim as a work-related injury.

Relief Requested

The worker asks that the hearing officer’s December 31, 2008 decision be reversed and that his claim be accepted as a work-related injury. Also, that he be provided any wage loss and medical benefits as a result of the injury including interest.

Issue: Did the worker suffer a work-related injury?

Answer: Yes

Reasons and Findings

- [37] It should be noted the committee is aware of the 2002 accident in which the worker significantly injured his right knee. As stated previously, that accident and the resulting injury to the worker was deemed not to be work-related. Since then almost five years have passed before the worker claims his knee gave out during a roofing job in May of 2007. At that time and the subsequent three or four times it happened while he was on a roofing job, he was able to pop his knee back in and continue the job. His latest injury in September 2007 occurred while he was on a fencing job trying to remove a large rock out of a hole. He was unable to manipulate his knee back into position, was in considerable pain, and had to be taken to the hospital emergency department.
- [38] We understand the worker's employment, especially in the roofing business, puts him at a relatively high risk for knee injury. We also understand that, because of his accident in 2002, the worker is at a high risk for degenerative osteoarthritis changes in his knee joint. Both of the risk areas have been addressed by medical practitioners in this case.
- [39] We highlight the findings of the medical practitioners in order to gain a better perspective of their analyses and the reasons for them:

September 28, 2007: Dr. A. reports "right patellar partial dislocation laterally, with conscious sedation x three attempts, patella reduced." Dr. A. advises the worker return on October 18 for a referral to an orthopaedic specialist for fixation of patellar tracking.

September 29, 2007: Dr. B. in a progress report notes, "soft tissue injury knee (right)." Complicating factors are "similar episodes in past, tibial plateau fracture."

October 18, 2007: Dr. A.'s Encounters Report states the worker reported that his knee has "subluxed 5 times in 4 months." When Dr. A. saw him in the Emergency Department, the worker's knee was completely dislocated to the right. Dr. A. reports that although the worker has returned to work, he recommends an expedited referral to an orthopaedic surgeon.

November 15, 2007: The board's chief medical consultant finds "from a medical perspective, it would be reasonable and probable to relate the ongoing subluxations to the 2002 trauma Currently the diagnosis is recurrent subluxation and dislocations of the patella."

December 3, 2007: Dr. C. orthopaedic specialist, reports in part:

[The worker] has evidence of right knee PCL insufficiency and an old healed lateral tibial plateau fracture with very slight lateral plateau depressions. He now has a lateral meniscal tear with a locked knee secondary to a twisting injury at work.

He recommends "urgent knee arthroscopy and meniscectomy and debridement."

December 4, 2007: Dr. C. in an Amended Operative Report states:

The intraoperative findings in this case has demonstrated an acute large bucket handle tear of the lateral meniscus with displacement into the intercondylar notch leading to a locked knee. As a result, while he has had a previous left [should be right] knee surgery, the current locked knee injury is specifically related to an acute lateral meniscal tear and is, as a result, clearly related to his work injury of approximately 2 months ago.

December 18, 2007: Dr. A.'s Encounters Report notes, after reviewing the worker's records and Dr. C.'s report, "it would appear that it is quite possible that this patient actually suffered an acute bucket handle tear resulting in a locked knee." He states, "I would support Dr. C.'s position given the clinical presentation of the patient with an acutely painful locked knee without an obvious dislocated patella, could easily have been an acute meniscal tear."

January 11, 2008: The medical consultant states, "Lifting a heavy object and twisting while in a full crouched position could produce an acute bucket handle tear. The tear can lock the knee and ultimately require the surgery performed by Dr. C. I would concur with Dr. C. that someone with no previous knee complaints, who suddenly developed an acutely painful locked knee, it would be reasonable to assume that, the activity at the time could produce the meniscal tear." He then added, this would be unmistakable and the person should know whether or not they were on the ground lifting a rock or sitting on a roof when it first happened. [Note: We point out that it appears the medical consultant did not have the proper sequence of events and locations when the statement was made.]

January 25, 2008: The medical consultant, after reviewing Dr. C.'s pre-operative December 3, 2007 assessment, states that Dr. C. identified a posterior cruciate ligament laxity and notes the x-rays identify early degenerative roughening of the lateral tibial plateau as well as a small medial osteophyte. He further notes that at the time of the December 4, 2007 surgery, the worker had a locked right knee with a large complex bucket handle tear. He repeats "the first episode is generally the most clinically significant" and it would be reasonable and probable to conclude that the worker's degenerative changes are related to the previous trauma suffered in 2002.

May 16, 2008: Dr. C.'s Specialist Clinic Consultation Report, after reiterating the worker had a displaced bucket handle lateral meniscal tear, states:

It is inconceivable to me as to how this injury could not be considered to be work place related. I acknowledge that he [the worker] did have a previous tibial plateau fracture. Nevertheless he was able to return to activities and a full work load. While such an injury may lead to stiffness around the knee, and perhaps even some joint roughening, it did not cause his bucket handle tear. Even if one might postulate that he would have been at slightly higher risk for developing a meniscal tear simply because of the presence of a preceding knee injury, it is clear that the meniscal tear is a new injury that

came on in somebody who may have been at worst at slightly higher risk. I do not believe that I can make my opinion in this matter any more clear. It is my strong opinion that he has sustained a new acute injury to the lateral meniscus of his knee in a work related accident.

- [40] All the doctors agree the worker's knee showed some signs of degenerative changes. Were those degenerative changes the sole cause of the subluxations, the subsequent locked knee incident and the required surgery to repair the complex bucket handle tear?
- [41] The committee points out the two positions taken by the medical professionals involved in this worker's claim:
1. Dr. A., the worker's family physician and Dr. C, the orthopaedic surgeon who performed the surgery, both of whom state, in their opinion the worker suffered a complex bucket handle meniscal tear as a result of a workplace injury.
 2. The medical consultant takes the position that the meniscal tear was a result of the degenerative changes since the traumatic injury to his knee in the 2002 accident. The adjudicator and hearing officer agreed with the medical consultant that the worker's right knee problems are not due to a specific work-place incident.
- [42] We also note the progression of the knee incidents from several subluxations to a locked knee episode which required hospital intervention. Each of the incidents occurred while the worker was engaged in his employment which led us to consider the possibility of a progressive injury from a small tear to a large one.
- [43] The worker, because of the extensive trauma to his right knee in the 2002 accident, was likely more prone to degenerative changes in that knee. Also, because of the posterior cruciate ligament laxity noted by Dr. C., the knee would be more liable to subluxations. That left us with the following questions:
- Did the cruciate ligament laxity come about as a result of the accident?
 - Was it due to the type of employment in which the worker was involved?
 - Was the cruciate ligament laxity present before the subluxation incidents or did it become that way because of the incidents?
- Unfortunately without specific medical information for the period immediately before the incidents, we are unable to obtain the answers to those questions. Therefore, we must rely on the findings of the medical professionals and their specific comments after the worker's knee surgery.
- [44] On that basis we give more weight to the findings of Dr. A. and Dr. C. They both examined the worker and came to the same conclusion that the complex bucket handle meniscal tear was most likely the result of a work-place injury. The medical consultant agreed that a meniscal tear like the worker suffered could be a result of trying to lift a stone out of a hole; however, with the history of the 2002 accident he thought it more likely that it was due to degenerative changes in the knee.

[45] We point out that Policy CL-47, Pre-existing Conditions, does not preclude a worker from receiving compensation because the pre-existing condition was due to a non-work related incident. Policy CL-47 follows in part:

B. Entitlement to Compensation

A pre-existing condition may not negate a worker's entitlement to compensation benefits.

If it can be shown that the pre-existing condition is worsened by the compensable condition, the pre-existing condition shall be considered compensable to the extent that the pre-existing condition has deteriorated as a result of the compensable condition.

[46] Policy CL-42, Arising Out of and In the Course of Employment, requires that the disability be work-related. It has to arise out of employment and in the course of employment. Excerpts from Policy CL-42 follow:

"Arising out of employment" means that a disability was caused by a worker's employment. It must be linked to, originate from, or be the result of, in whole or in part, by an activity or action undertaken because of the worker's employment.

"Arising in the course of employment" means the disability must be linked to a worker's employment in terms of time, place and activity. It is the direct result of an activity, action, procedure, or conduct undertaken during a worker's employment.

[47] Section 6 of the *Workers' Compensation Act*, R.S.Y. 2002 provides:

If a disability arises out of or in the course of a worker's employment, the disability is presumed to be work-related unless the contrary is shown.

[48] Section 33 of the *Act* states:

Despite anything contained in this Act, on any application for compensation, a worker or a dependent of a deceased worker is entitled to the benefit of the doubt which means that, when there is doubt on an issue respecting the application and the disputed possibilities are evenly balanced, the issue shall be resolved in the favour of the worker or the dependent of a deceased worker.

[49] The worker is self-employed undertaking a range of jobs from roofing to fencing. We recognize it is difficult to ascertain in these situations if an injury occurred on the job or not; however, we assume that when incidents happen on a roof and in a fence hole, they are work-related. We find the worker's disability did arise out of employment and the activity the worker was engaged in when his knee locked up arose in the course of his employment.

Conclusion

[50] By giving more weight to the reporting by actively involved medical practitioners, one of them being a specialist in his field, the committee concludes the worker suffered a work-related injury.

[51] We conclude the worker's injury arose out of and in the course of his employment.

Relief Requested

The worker asks that the hearing officer's December 31, 2008 decision be reversed and that his claim be accepted as a work-related injury. Also, that he be provided any wage loss and medical benefits as a result of the injury including interest.

Decision

The worker's appeal is allowed. The hearing officer's December 31, 2008 decision is reversed.

1. The worker is entitled to compensation for his work-related injury and subsequent surgery.
2. The board shall pay interest on compensation in accordance with board Policy CL-52 and section 31 of the *Workers' Compensation Act*, R.S.Y. 2002, c. 231.

Dated this **8th day of November 2011** in the City of Whitehorse, Yukon Territory.

M. McCullough, Member

H. Leenders, Committee Chair

H. Hermanson, Member