IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 21

WCC No. 2003-0819

WENDY LOCKWOOD

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: The claimant suffered from a preexisting anatomical abnormality of her knee, predisposing her to dislocation of her kneecap. Prior to 2001, she had dislocated her kneecap (patella) on at least one occasion and suffered twisting injuries on other occasions. In June 2001, she suffered a dislocation of her knee at work. Her employer's insurer accepted liability for the injury. Nine months later she suffered a more serious nonwork- related patellar dislocation while shoveling snow. The insurer denied liability for benefits after that injury.

Held: The claimant reached maximum medical improvement (MMI) prior to her March 2002 injury. The March 2001 injury was a material, permanent aggravation of her preexisting condition. Under section 39-71-407(5), MCA (1999), that subsequent, nonwork- related injury relieved the insurer of further liability for her patellar condition.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code: section 39-71-407(5), MCA (1999). Where the claimant reached MMI following a work-related patellar dislocation, and thereafter suffered a material, permanent aggravation of her patellar condition in a nonwork-related injury, the insurer for the work-related injury is relieved of further liability under section 39-71-407(5), MCA (1999).

Injury and Accident: Aggravation: Generally. Where the claimant reached MMI following a work-related patellar dislocation, and thereafter suffered a material, permanent aggravation of her patellar condition in a nonwork- related injury, the insurer for the work-related injury is relieved of further liability under section 39-71-407(5), MCA (1999).

Injury and Accident: Subsequent Injury. Where the claimant reached MMI following a work-related patellar dislocation, and thereafter suffered a material, permanent aggravation of her patellar condition in a nonwork- related injury, the insurer for the work-related injury is relieved of further liability under section 39-71-407(5), MCA (1999).

Maximum Medical Improvement (MMI). Where the claimant suffered a work-related dislocated patella; an orthopedic physician testified that the claimant likely reached MMI within six weeks of a patellar dislocation; the claimant returned to work and worked steadily for the next nine months; the claimant by her own admission was experiencing no knee symptoms a week prior to a subsequent injury which occurred nine months later; and by her own admission during the month prior to the subsequent injury her knee "bothered her every now and then," and only when she stood for a long time; and then the claimant again dislocated her patella in another accident, the Court finds that the claimant had reached MMI prior to the subsequent injury.

Proof: Conflicting Evidence: Medical. The Court finds the opinions of an IME orthopedic physician persuasive as to MMI as to a work-related patellar dislocation suffered by claimant even though he was hired by the insurer. The condition is an orthopedic one and the contrary opinion is rendered by a treating physician who is a family practitioner. Moreover, the only prescription for treatment following the claimant's work-related injury was for physical therapy and the claimant chose not to undergo that therapy; and the claimant was asymptomatic during the week prior to the subsequent injury and her self-described symptoms during the month prior were that her knee "bothered her every now and then."

Maximum Medical Improvement (MMI). Where the claimant has access to but fails to take advantage of the only treatment prescribed for her injury, she is at MMI.

¶1 The trial in this matter was held in Great Falls, Montana on September 8, 2003. Petitioner, Wendy Lockwood (claimant), was present and represented by Ms. Charla K. Tadlock. Respondent, Liberty Northwest Insurance Corporation (Liberty), was represented by Ms. Carrie L. Garber.

¶2 Exhibits: Exhibits 1 thorough 7 were admitted without objection.

¶3 Witness and Depositions: Claimant was the sole witness at trial. In addition, the parties submitted the depositions of the claimant, Randale Sechrest, M.D., Candi Shalz, Jennifer Swanson, Daniel P. Rausch, M.D., and Donna Kanewischer for the Court's consideration.

¶4 Issues Presented: The issues as set forth in the Pretrial Order are:

¶4a Whether Liberty Northwest Ins. Corp. is liable for the Petitioner's knee condition after 3/17/02.

¶4b Whether Petitioner is entitled to payment of past and future medical benefits, temporary total disability benefits, temporary partial disability benefits, and future benefits allowed by the workers' compensation law.

(Pretrial Order at 2.)

¶5 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witness, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 The claimant is a thirty-two-year-old woman with a prior history of right knee problems. When she was sixteen, she twisted her knee while jumping rope. In 1993 she dislocated the kneecap of her right knee. In 1996 she twisted her right knee but did not dislocate it. (Trial Test. and see Ex. 3 at 35.)

¶7 On February 25, 1997, the claimant was seen for right knee pain at Marias Healthcare in Shelby by Dr. Robert F. Stanchfield. The office note for that visit is illuminating in the context of the present case. In relevant part, it records:

> Problem: An a painful right knee
>
> S The patient states that her knee was injured several years ago and she has reinjured it a time or two. One time she had a dislocated patella which relocated more or loss [sic] spontaneously. Intermittently when she is walking or running and plants weight on that leg and turns, it will collapse and she will fall. Then the knee will fill up with blood or at least develop an effusion and be sore for a number of days. She has not really fallen for several months, but a number of times she felt as if she was on the verge of falling when she planted the knee and then turned on it a bit. It will stay sore for a few days then. She apparently had x-rays a number of years ago out in California which were interpreted as being negative.

(Ex. 3 at 9.) The assessment at that time was, "Old injury, right knee, with apparent instability at times, suggesting internal derangement." (Id.)

¶8 The claimant was referred to Dr. Gregory S. Tierney, an orthopedic surgeon practicing in Great Falls. He saw her on March 7, 1997. (Ex. 3 at 54, 57.) His assessment of her right knee was "a probable right patellofemoral subluxation with continued maltracking." (Id. at 57.) He recommended "a course of physical therapy to work on patellar tracking and quadriceps strengthening." (Id.) However, there is no record of any physical therapy following the recommendation.

¶9 In September of 1997, the claimant went to work at the Main Street Convenience Store in Shelby, Montana (see Ex. 1), and continues to be employed there. She works as a cashier.

¶10 On June 20, 2001, while at work and getting on or off a stool, claimant dislocated (subluxed) her right kneecap. She experienced immediate, sharp pain, however, her kneecap returned to place after a few minutes. (Trial Test. and Ex. 3 at 30.)

¶11 Later in the evening of June 20, 2001, the claimant went to the Emergency Room of the Marias Medical Center. The ER report indicates she had "minimal swelling," along with "tenderness." (Id.) The diagnosis was a "dislocated patella" which had returned to place. (Id.)

¶12 Five days later – June 25, 2001 – the claimant underwent an MRI of her right knee. The MRI was read as indicating the "patella is displaced slightly laterally" and a possible tear of the medial meniscus. (Ex. 3 at 7, 28-29.) The claimant was seen by her family physician, Dr. Daniel P. Rausch, and referred back to Dr. Tierney, who had seen she in 1997.

¶13 The claimant was thereafter seen on July 24, 2001, by Dr. Tierney and his physician's assistant. (Id. at 54.) Dr. Tierney reviewed the MRI and found no evidence of a meniscal tear. He noted, however, that "her patella is somewhat displaced laterally." (Id.) He diagnosed "[c]hronic patellofemoral maltracking" and prescribed "a formal course of physical therapy to try and help avoid any of these recurrent subluxations in the future." (Id.) He gave her a prescription for physical therapy.

¶14 At the time of the incident, the claimant's employer was insured by Liberty. She submitted a claim to Liberty, which accepted liability. Liberty thereafter paid medical bills relating to the claimant's right knee. The last medical bill paid was for Dr. Tierney's July 24, 2001 exam.

¶15 Even though Liberty agreed to pay the claimant's medical expenses for her injury, the claimant never followed through with the physical therapy prescribed by Dr. Tierney. At trial she testified that she did not go to physical therapy because it would have interfered with her job schedule at the convenience store and she needed the money she was earning from her job. Her excuse was not believable. According to her own testimony, her hours of work were 2:00 p.m. to 10:00 p.m. or 3:00 p.m. to 11:00 p.m. There was ample time during the morning hours for her to have obtained physical therapy.

¶16 Between July 24, 2001 and March 17, 2002, the claimant did not seek medical care for her knee.

¶17 In her direct testimony, the claimant testified that during the months following her June 20, 2001 injury she continued to have pain and swelling in her knee. However, her deposition testimony and medical records indicate that at least by mid-February 2002, she

was having few problems with her knee. In her deposition she testified that in the week preceding March 17, 2002, she was having no problems with her knee. (Lockwood Dep. at 40.) With respect to the month prior, she said her knee bothered her "every now and then," and indicated it bothered her when she had stood for a long time. (Id. at 40-41.) Dr. Rausch, in his office note of March 17, 2002, records that claimant "states that she has not been having any problems for the most part until this morning when she was apparently shoveling snow, twisted her knee and ended up going down on the ground." (Ex. 3 at 22.)

¶18 On March 17, 2002, the claimant twisted her right knee while shoveling snow and dislocated her kneecap. This time the kneecap did not spontaneously return to its normal position and she had to have it "reduced" in the Emergency Room of the Marias Medical Center. (Id.) Dr. Rausch, who had seen her following her 2001 injury, treated her at the ER. His ER report for March 17, 2002, state as follows:

> H.I.: This is a 29-year-old white female patient who I am familiar with whom approximately a year ago she had a similar incident which she was able to self reduce her kneecap. [sic] She states that she has not been having any problems for the most part until this morning when she was apparently shoveling snow, twisted on her knee and ended up going down on the ground. Apparently the ambulance had to come to get her and bring her in. Her patellar in fact was on the lateral aspect of her knee when she got here. She was in a sitting up position with the knee flexed. She was in a fair amount of pain. Good pulses.

(Ex. 3 at 22.)

¶19 Following the incident, the claimant had bruising of her knee. (Id. at 5.)

¶20 The claimant was referred back to Dr. Tierney and saw him on March 20, 2002. Dr. Tierney's office note for that date is significant. In it he says:

> . . . We saw Wendy [claimant] for a similar problem back in July 2001 at which time we recommended physical therapy. She has been actually referred to physical therapy on several different occasions by different physicians and she has not yet had any physical therapy.

(Id. at 55.) This time, however, Dr. Tierney for the first time suggested the possibility of surgery. His physician's assistant, who wrote the office note, recorded:

> Dr. Tierney and myself had a lengthy discussion with Wendy that her noncompliance in the past with physical therapy orders really makes this a difficult case for her. She would likely benefits from a Fulkerson osteotomy to realign the patella, however, this would require extensive physical therapy as well as an extended period of time off of work. Dr. Tierney recommended that we place Wendy in a patellar stabilizing brace, have her get into some formal physical therapy for several weeks. Wendy is in

> agreement with this plan. If she continues to fail conservative treatment, we would be willing to continue on to surgical intervention.

(Id.)

¶21 In a March 20, 2002 letter to Dr. Rausch, Dr. Tierney's physician's assistant commented on the claimant's lack of compliance with prior physical therapy recommendations:

> Wendy would definitely benefit from a Fulkerson osteotomy, however, given her poor compliance in the past with physical therapy we are a little reluctant at this point to proceed. Wendy has agreed to do a more diligent trial of physical therapy at this time and if she does fail this conservative treatment, we could potentially proceed with Fulkerson osteotomy.

(Id. at 59.)

¶22 This time the claimant complied with Dr. Tierney's recommendation and underwent physical therapy. (See Ex. 3 at 42-46.) Dr. Rausch provided follow-up care, at least until April 12, 2002. (See Id. at 3.)

¶23 After learning of the claimant's March 17, 2002 accident, Liberty denied liability for further medical or indemnity benefits. (Ex. 4.)

¶24 The claimant was off work for a month following her March 17, 2002 accident and then for a period of time only worked part time. (Trial Test. and see Ex. 3 at 3-5.) She testified that she continues to have pain and swelling of her knee and that it often feels like it will "give out" even though she is on her feet no more than prior to the 2002 accident. On the other hand, she testified that her pain and swelling are the same as after the 2001 accident.

¶25 Both Drs. Tierney and Rausch provided letters in which they expressed their opinions concerning the relationship of the claimant's March 2002 accident to her June 2001 industrial accident. Dr. Tierney's letter was addressed to Liberty's claims adjuster. It is short and reads in full:

> I last saw Ms. Lockwood on 4/30/02 for a recurrent dislocation of her right patella. It is common for people who have had dislocations of their patella to have recurrent instability as a result of disruption of the medial retinaculum and overall weakness of the extensor mechanism. I do think her repeat dislocation is a potential natural progression of her 6/20/01 incident. I had not had an opportunity to see Ms. Lockwood back to place her at maximum medical improvement between 7/24/01 and 3/17/02; therefore, I do not know whether she was doing well and not having any problems in that intermediate period. Based on her current findings I do believe it is probably a progression of her previous work related injury and would consider it in that status.

(Id. at 60.)

¶26 Dr. Rausch's letter was addressed to the claimant's attorney. He wrote:

> I am responding to your letter dated April 16, 2003, concerning this patient's Workers' Comp claim of June 20, 2001. The patient, in my notes, was noted to have had previous right patellar problems, last being noted in February of 1997 by Dr. Robert Stanchfield, and she was referred to Dr. Tierney at that time. She was thought to have had a probable right patellofemoral subluxation with maltracking at that time.
>
> The patient had not had significant symptoms with her right knee again until her injury of June 20, 2001, at the Main Street Convenience. She was seen in my office on June 28 concerning this as she continued to have problems after that injury. She was seen by physical therapy and worked with them concerning her problem.
>
> She had a recurrence of her injury on March 17, 2002, in which she had a patellar dislocation which required manual reduction in the emergency room. I suspected at that time that her injury back in 2001 played a role in the significant dislocation that occurred on March 19 [sic] as the ligaments and tendons which hold the alignment of these bony articulations become progressively more attenuated with each significant injury. The injury of June 20, 2001, was obviously the only significant injury that we have in the record prior [sic] to 1997. I therefore feel that this played a significant role in what now is a worsening patellofemoral tracking problem.
>
> It is still my opinion that the episode of March 17, 2002, was directly related to Wendy's injury of June 20, 2001, for the above-stated reasons. If you have any further questions concerning this problem, please feel free to contact me.

(Ex. 3 at 1-2.)

¶27 As set out in both letters, the causal relationship found by both doctors was in the nature of a predisposition to further incidents of the sort the claimant suffered on March 17, 2002.

¶28 Dr. Rausch, who is board certified in family practice, testified by deposition. His testimony concerning causation was consistent with his letter. He testified that her June 2001 industrial injury

> made her susceptible to reinjury in March of 2002, which each injury following that is going to make her knee subsequently weaker, more susceptible to dislocation. That's what happens with the ligaments, once you damage ligaments, they are never as good as they were initially.

(Rausch Dep. at 13.)

¶29 He also testified concerning two other points critical to the decision in this case: whether the claimant had reached maximum medical improvement (MMI) prior to March 17, 2002, and whether the March 17, 2002 incident materially aggravated her preexisting knee condition.

¶30 With regard to MMI he opined that she had not reached that point prior to March 17, 2002 and testified that it could take up to two years for ligaments and muscles to rebound from the injury, although he said that it would probably take less time with physical therapy and her failure to submit to physical therapy may have delayed MMI. (Rausch Dep. at 11, 25-26). Of significance, he did not identify treatment for claimant's 2001 injury other than physical therapy.

¶31 With regard to the effect of the March 17, 2002 injury, he testified that the claimant probably ruptured tendons in that incident. (Id. at 32-33.) He also said that surgery was a reasonable remedy after the 2002 injury. (Id. at 16-17.)

¶32 Dr. Randale Sechrest examined the claimant at the insurer's request and also testified by deposition. Dr. Sechrest is a board certified orthopedic surgeon and has performed numerous knee operations. Dr. Sechrest's speciality encompasses knee injuries such as the claimant's.

¶33 Dr. Sechrest testified that the claimant has a preexisting anatomical abnormality of her knee which predisposes her to dislocation of her kneecap. (Sechrest Dep. at 13, 15, 17.) His testimony is supported by Dr. Tierney's note that the claimant suffers from "[c]hronic patellofemoral maltracking." (See ¶ 13 above and Sechrest Dep. at 19.)

¶34 He further testified that the March 17, 2002 injury was more significant than her prior injuries and probably involved tearing of the tissue in her knee, as evidenced by the bruising and ecchymosis immediately following that injury but not present following the prior injuries. (Id. at 25-26.)

¶35 Finally, he opined that the claimant had reached MMI from her June 2001 injury prior to March 17, 2002. (Id. at 10-11, 29-30.) He testified that "connective tissue" injuries typically heal far more quickly than the nine month interval between the claimant's June 2001 injury and her March 2002 injury and that the typical time for MMI following the sort of injury she suffered in June 2001 is four to six weeks even without physical therapy. (Id. at 10-11, 30.) He further testified that the fact that she had some continuing symptoms did not change his opinion since her underlying condition was "not going to go away." (Id. at 12.)

Resolution

¶36 There are two factual issues which need to be resolved in this case. The first is whether the claimant suffered a permanent, material aggravation of her preexisting knee condition when she dislocated her kneecap on March 17, 2002. If she suffered only a temporary

aggravation, then Liberty remains liable for medical expenses and indemnity benefits after the temporary aggravation resolved, i.e., after she returned to baseline. Second, if on March 17, 2002, she suffered a permanent and material aggravation of her preexisting knee condition, had she already reached maximum medical improvement with respect to her June 20, 2001 injury?

¶37 The first question is the easiest to answer. While the June 20, 2001 injury undoubtedly weakened the claimant's knee and further predisposed her to further patellar dislocation, it is also clear that the March 17, 2002 injury caused further permanent damage to her knee. It was only after the March 17th injury that surgery was considered and recommended. Her own testimony shows that her knee problems, consisting of swelling and a frequent feeling that it may "give out," are more persistent since the March 17th injury. Following the March 17th injury, she had bruising and ecchymosis (the escape of blood into the tissues from ruptured blood vessels), which she had not experienced with her prior patellar dislocations and which indicated actual tearing of the connective tissue in her knee. (See ¶ 34.) Even Dr. Rausch opined that on March 17th she probably ruptured some tendons in her knee. (Rausch Dep. at 33.)

¶38 The testimony concerning MMI following the June 20, 2001 injury is conflicting. The claimant's treating orthopedic physician, Dr. Tierney, declined to render an opinion because he had not seen her between July 24, 2001 and March 17, 2002. (Ex. 3 at 60.) Dr. Rausch opined she had not reached MMI during that interval since she continued to experience problems and it could take, in his opinion, up to two years for full healing of the ligaments and muscles, although he conceded that physical therapy could have accelerated her recovery. Dr. Sechrest opined that even without physical therapy, the claimant should have reached MMI within six weeks and in fact was at MMI prior to March 17, 2002.

¶39 I find Dr. Sechrest's opinions the more persuasive. While I recognize that he was hired by the insurer to evaluate the claimant, I have taken that fact into consideration and still find his opinion persuasive. In doing so, I note the following facts as supporting his opinion over that of Dr. Rausch:

> ¶39a Patellar dislocations fall under the orthopedic speciality. While family physicians are certainly qualified to diagnose and treat the condition, orthopedic surgeons are more qualified to do so.
>
> ¶39b The claimant's patellar dislocation on June 20, 2001, was not as significant as the March 17, 2002 injury and likely did not involve the degree of injury as on March 17, 2002. On June 20, 2001, the dislocated patella spontaneously returned to its normal position within minutes and she did not suffer bruising or ecchymosis, which are the hallmarks of soft tissue tearing.

¶39c The claimant returned to work after a day or two and continued working during the next nine months.

¶39d Between her July 24, 2001 and March 17, 2002 injuries, the claimant did not seek medical care for her knee.

¶39e The claimant's own testimony indicated that prior to March 17, 2002, her knee was bothering her very little. In her deposition she testified that in the week preceding March 17, 2002, she was having no problems with her knee. (Lockwood Dep. at 40.) With respect to the month prior, she said her knee "bothered her every now and then," and indicated it bothered her when she had stood for a long time. (Id. at 40-41.)

¶39f The claimant did not undertake the physical therapy prescribed by Dr. Tierney following her June 20, 2001 injury. While she testified she did not do so because she needed to continue working and her working precluded her doing physical therapy, I have found that explanation unbelievable in light of the fact that she did not commence work until 2:00 p.m. or 3:00 p.m. in the afternoon, leaving her mornings free to obtain physical therapy. Since her claim was accepted by Liberty that therapy would have been paid for by Liberty. I find it more likely that she did not feel physical therapy was needed or essential, which is another indication that she quickly rebounded from her June 20, 2001 injury and did not suffer any significant lingering problems from it.

¶39g The only treatment prescribed following the claimant's June 20, 2001 injury was physical therapy and the claimant declined that treatment. Thus as of July 24, 2001 (the date Dr. Tierney prescribed physical therapy), there was no further medical treatment which would improve her condition.

CONCLUSIONS OF LAW

¶40 This case is governed by the 1999 version of the Montana Workers' Compensation Act since that was the law in effect at the time of the claimant's industrial accident. Buckman v. Montana Deaconess Hospital, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶41 It is undisputed that the claimant suffered a patellar dislocation of her right knee on June 20, 2001, and that Liberty accepted liability for that injury. The issue in this case is whether the claimant's subsequent patellar dislocation on March 17, 2002, relieves Liberty of further liability for the claimant's patellar condition.

¶42 A template for analysis of the issues in this case is found in this Court's decision in Patterson v. Montana Contractor Compensation Fund, 1999 MT 158, 295 Mont. 120, 983 P.2d 300. Under the holding in that case, the insurer for an accepted claim must prove that

the claimant reached MMI and thereafter suffered a nonwork-related injury to the same part of his body. I follow that template.

¶43 Initially, this dispute is governed by section 39-71-407(5), MCA (1995), which provides:

> (5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

Since Liberty accepted liability for the claimant's June 20, 2001 industrial injury, it bore the burden of proving that the claimant reached MMI prior to March 17, 2002, and that she suffered a further injury to her knee on that date. Chaney v. U.S. Fidelity & Guaranty, 276 Mont. 513, 519, 917 P.2d 912, 915 (1996); and see Patterson, 1999 MT 158, ¶¶ 38-43, 295 Mont. 120, ¶¶ 38-43, 983 P.2d 300, ¶¶ 38-43.

¶44 The definition of an "injury" for purposes of section 39-71-407(5), MCA (1999), is the same as for an injury suffered in the course and scope of employment: section 39-71-407(5), MCA, provides no separate, different definition. An injury is defined in section 39-71-119, MCA (1999), in relevant part:

> **39-71-119. Injury and accident defined.** (1) "Injury" or "injured" means:
> (a) internal or external physical harm to the body that is established by objective medical findings;
> (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or
> (c) death.
> (2) An injury is caused by an accident. An accident is:
> (a) an unexpected traumatic incident or unusual strain;
> (b) identifiable by time and place of occurrence;
> (c) identifiable by member or part of the body affected; and
> (d) caused by a specific event on a single day or during a single work shift.

Injuries include material, permanent aggravations of preexisting conditions. § 39-71-407(2)(a)(ii), MCA, and see Patterson, ¶¶ 45-48.

¶45 While the claimant suffered an industrial injury to her right knee on June 20, 2001, I am persuaded in this case, that on March 17, 2002, the claimant suffered a new, material and permanent aggravation of that injury. I refer the reader back to my findings of fact, paragraphs 37 to 39. Liberty has therefore satisfied its burden of establishing a new injury.

¶46 The remaining and most difficult issue is whether the claimant had reached MMI prior to her March 17, 2002 injury. Maximum medical improvement is defined in section 39-71-116(18), MCA (1999), as follows:

> "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

Primary medical treatment is defined in section 39-71-116(26), MCA (1999), as follows:

> "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

As set forth in my findings of fact, the only treatment prescribed for the claimant after her 2001 injury was physical therapy, which was available to her but she chose not to pursue. Where a claimant refuses further treatment, MMI has been reached. Hams v. Liberty Northwest Ins. Corp., 2000 MTWCC 6, ¶45; Bustell v. State Comp. Ins. Fund, 2002 MTWCC 18, ¶¶ 57, 62. Moreover, other evidence shows she was medically stable prior to March 17, 2002. I have therefore found as a matter of fact that the claimant reached MMI prior to her March 17, 2002 injuries.

¶46 Since Liberty has satisfied its burden under section 39-71-407(5), MCA, it is not liable for medical or indemnity benefits after March 17, 2002.

JUDGMENT

¶47 While Liberty is liable for the claimant's June 20, 2001 industrial injury to her knee, the claimant suffered a subsequent, March 17, 2002 nonwork-related injury to that knee. The subsequent injury relieves Liberty of further liability with respect to the claimant's June 20, 2001 injuries. The petition is therefore dismissed with prejudice.

¶48 This JUDGMENT is certified as final for purposes of appeal.

¶49 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 2nd day of March 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Ms. Charla K. Tadlock
Ms. Carrie L. Garber
Submitted: September 8, 2003

1 "Dislocate" and "sublux," and variants of those terms, are used in the medical records. They describe the same thing, i.e., the kneecap going out of its usual anatomical track.

2 Encyclopedia Britannica 2003.

3 Section 39-71-407(2)(a)(ii), MCA, provides:

(2)(a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:
(i) a claimed injury has occurred; or
(ii) a claimed injury aggravated a preexisting condition.