STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.		WORKERS' COMPENSATION COURT APPELLATE DIVISION
EDWARD POLLOCK	)	
	)	
VS.	)	W.C.C. 98-01451
	)	
DUPUIS OIL COMPANY	)	
EDWARD POLLOCK	)	
	)	
VS.	)	W.C.C. 98-00104
	)	
DUPUIS OIL COMPANY	)	
EDWARD POLLOCK	)	
	)	
VS.	)	W.C.C. 97-07525
	)	
DUPUIS OIL COMPANY	)	
EDWARD POLLOCK	)	
	)	
VS.	)	W.C.C. 97-02065
	)	
DUPUIS OIL COMPANY	)	

DECISION OF THE APPELLATE DIVISION

HEALY, C. J. These four (4) matters where consolidated by the court for trial and remain consolidated on appeal to the Appellate Division. The employee has appealed from the decision of the trial judge determining that the respondent is responsible for only fifty percent (50%) of Dr. Froehlich's outstanding bill for services rendered to the employee for treatment of his left knee between December 5, 1996 and April 15, 1998. After a plenary review of the record and thorough consideration of the arguments of the parties, we reverse the decision of the trial court in part.

The present case emanates from the following four (4) petitions. W.C.C. No. 97-02065 is an employee's petition to review alleging that the employer refuses to pay for necessary medical services, namely, Dr. John Froehlich's medical bill in the amount of Three Hundred Thirty-five and 00/100 ($335.00) Dollars. At the pretrial conference, the petition was denied and the employee duly claimed a trial. Prior to trial, the judge granted the employee's motion to amend the petition to reflect that the amount owed to Dr. John Froehlich for medical treatment was Nine Hundred Thirty-five and 50/100 ($935.50) Dollars. After trial, the court concluded that the treatment rendered by Dr. Froehlich to the employee's left knee was necessary to cure, relieve, or rehabilitate the employee from the effects of an injury that he sustained in 1980, as well as an injury that he sustained in 1990. The trial judge further concluded that since the 1980 injury is not compensable because the employee failed to file a petition for benefits within the appropriate statute of limitations, the respondent was responsible for only fifty percent (50%) of Dr. Froehlich's outstanding bill.

W.C.C. No. 97-07525 is an employee's original petition seeking benefits from December 29, 1980 to February 9, 1981, for an injury sustained to his right knee and right hand on

December 27, 1980. At the pretrial conference, the trial judge denied the petition and a claim for trial ensued. Thereafter, the trial judge concluded that the employee's claim for benefits for an alleged injury of December 27, 1980 was barred by the statute of limitations.

W.C.C. No. 98-00104 is another original petition for benefits seeking the payment of medical benefits for injuries to the right hand and left knee which occurred when the employee slipped on wet stairs while walking down a bulkhead. At the pretrial conference, the trial judge denied the petition and the employee claimed a trial. The trial judge granted the employee's motion to amend the instant petition to change the nature of the injury to include both the right and left knees. In addition, the petition was amended to allege constant bending, stooping, crouching, and kneeling as the cause of the injuries. Following a full trial, the trial judge concluded that the petitioner failed to prove by a fair preponderance of the credible evidence that he sustained injuries to either knee during the period between September 25, 1995 and January 7, 1997 as a result of constant bending, stooping, crouching, and kneeling.

Finally, W.C.C. No. 98-01451 is an employee's petition to review seeking payment of Dr. Froehlich's medical bills for treatment of employee's right and left knee injuries caused by constant bending, stooping, crouching, and kneeling. At the pretrial conference, the trial judge denied the petition. Following a full trial, the trial judge concluded that the petitioner had failed to prove by a fair preponderance of the credible evidence that he sustained injuries to his right knee and left knee which necessitated treatment by Dr. Froehlich as a result of constant bending, stooping, crouching, and kneeling. The employee filed a timely claim of appeal challenging the trial judge's rulings on each of the four (4) petitions.

Edward Pollock testified that he worked at Dupuis Oil as a service technician for approximately twenty (20) years. He stated that he was working for the respondent on

September 27, 1980, when he injured his right hand and right knee when he slipped on wet stairs while entering a bulkhead to inspect some boilers. The employee missed a day or two (2) from work, however, he did not seek medical treatment until three (3) or four (4) weeks later when problems with the knee commenced. He treated with Dr. Edward Spindell, who performed surgery to remove the meniscus from the right knee. Subsequent to the surgery, he missed approximately six (6) weeks of work.

Mr. Pollock initially returned to work in a light duty capacity. After approximately two (2) weeks at restricted duty, he went back to performing his regular duties of installing and servicing heating systems, boilers, oil tanks, and water heaters. He estimated that seventy-five percent (75%) of his work duties were conducted while kneeling on the ground. The employee testified that after treating with Dr. Spindell approximately three (3) times following this initial injury in 1980, he did not again seek medical treatment for his right knee until 1990.

On or about July 18, 1990, while still in respondent's employ, Mr. Pollock sustained a second injury to his right knee when he fell approximately ten (10) to fifteen (15) feet off a platform. He treated immediately at Miriam Hospital emergency room. This fall initially caused him to miss approximately two (2) days of work and he saw Dr. Spindell a few times. Approximately fifteen (15) months after the incident he began to see Dr. Steven Blazar because his right knee condition had progressively worsened. On June 17, 1992, Dr. Blazar performed arthroscopic surgery on his right knee causing him to miss approximately six (6) to eight (8) weeks of work. The employee indicated that he received workers' compensation benefits during this period. He stated that following this period of incapacity he returned to his regular duties as a service technician.

Although the employee returned to his regular position following the 1992 surgery, he continued to experience severe pain in his right knee. On September 10, 1993, Mr. Pollock commenced treatment with Dr. John A. Froehlich. On January 24, 1995, Dr. Froehlich performed a third surgery on the right knee, a high tibial osteotomy. The employee received workers' compensation benefits from the date of this operation until September 25, 1995, when he again returned to work as a service technician. Following his return to work, the right knee continued to bother him and he began to favor his left knee. Subsequently, he began to experience severe swelling and pain in that area. The employee claimed that severe left knee pain manifested in the fall of 1996, but that problems associated with that knee dated back to 1992. He further testified that in 1996 he mentioned the left knee problems to Jean Jutras, respondent's service manager, and Mark Dupuis, the purported future owner of the business.

The employee stated that after he advised his employer of his left knee problems they scheduled an appointment for him with an orthopedic group. He treated with physicians in this group on two (2) occasions and then requested a referral back to Dr. Froehlich. Mr. Pollock continued to perform his regular job until January 7, 1997, when he sustained a low back injury while working. As a result of said injury, the employee underwent surgery and collected workers' compensation benefits until he returned to his regular work duties on February 18, 1998. The employee stated that throughout the 1998 calendar year he continued to treat with Dr. Froehlich for his left knee problems.

The employee was also examined by Dr. Philo F. Willetts, Jr., at the court's request and Dr. Philip J. Reilly at the Rhode Island Insurers' Insolvency Fund's request. Mr. Pollock testified that he continues to experience severe pain and swelling in his left knee, however, he still performs his job duties to the best of his abilities. On cross-examination, the employee

admitted that he first informed Dr. Froehlich about his left knee complaints on December 5, 1996, three (3) years after his initial visit with the doctor.

The employee introduced the testimony of Dr. Froehlich, an orthopedic surgeon, who testified by deposition on July 22, 1998 and September 23, 1998. Dr. Froehlich began to treat the employee on September 10, 1993. He took a history from the employee at that time which revealed two (2) prior procedures to the employee's right knee – Dr. Spindell's 1980 open medial meniscectomy and an arthroscopic debridement performed by Dr. Blazar in 1992.

The doctor conducted a physical examination which showed evidence of symptomatic wear of the medial compartment of the right knee. The doctor related that, given the employee's age and desire to continue working, he felt a tibial osteotomy would be appropriate. Dr. Froehlich then testified that in his opinion the employee's symptoms were related to the fall in 1990, although he stated that the 1990 fall exacerbated a preexisting process which began after the surgery in 1980.

Dr. Froehlich saw the employee periodically and eventually performed a high tibial osteotomy on January 24, 1995. He testified that this procedure involved removing a wedge of bone below the knee joint in order to realign the leg. Mr. Pollock again returned to his regular job duties on September 25, 1995. In describing his treatment, Dr. Froehlich reiterated his opinion that the 1980 surgery initiated the condition in his right knee and the 1990 event exacerbated the preexisting process.

Dr. Froehlich testified that the employee first complained of increasing discomfort in his left knee on December 5, 1996, which he attributed to overcompensation. He diagnosed the employee with a left knee effusion, potentially caused by internal derangement or a torn

meniscus. The doctor stated that, in his opinion, this condition arose in the employee's left knee because the employee altered his gait and his daily activities due to the surgery to his right knee.

The employee had an MRI of his left knee on January 5, 1997 which showed fluid in the left knee as well as degenerative changes in the medial compartment, a significant complex tear of the inner or medial meniscus, and possible osteochondritis dissecans.

Dr. Froehlich continued to treat the employee throughout 1997 and into 1998. With regard to the cause of the employee's left knee problem, he expressed the following opinion:

> "I would add to that that do I [sic] not think it relates specifically to just the 1990 injury, though I think that plays a major feature. I think his ongoing left knee problem in many respects relates to an ongoing problem that he's had with his right knee, which obviously began before the event of 1990. So it is not clear cut as to when his left knee - - to which event, I guess, you can attribute his left knee process, which I believe is the reason why there are so many gentlemen in the room right now. But to answer your question, I believe an arthroscopic procedure is indicated to continue the care and improve Mr. Pollock's overall health condition."

Pet. Exh. 5, 7/22/98, pp. 17-18. Also, Dr. Froehlich testified that his fees for the care and treatment of the employee were fair and reasonable.

On cross-examination, Dr. Froehlich explained that an open meniscectomy (which was the surgery performed on Mr. Pollock in 1980) was performed today only in limited circumstances. He stated that an open meniscectomy would often catalyze gradual, premature arthritis, or the further loss of cartilage, in the patient's knee, and that this condition will typically manifest itself fifteen (15) to twenty (20) years after the surgery. The doctor also noted that the arthroscopic debridement performed by Dr. Blazar in 1992 was significantly less invasive than the 1980 procedure. Upon reviewing Dr. Blazar's 1992 operative report, Dr.

Froehlich agreed that the report showed considerable degeneration in the inner medial compartment of the knee and that this degeneration would be attributable to the 1980 surgery.

Dr. Froehlich indicated that he wrote a letter to petitioner's counsel in September of 1994 recommending a third surgery, a high tibial osteotomy, due to increasing symptoms experienced by the employee caused by premature arthritis. In discussing which event led to his recommendation, the doctor stated:

> "…I believe his problem with his right knee cannot be totally related to one event versus the other event. I believe both events, i.e., the injury of 1980 as well as the second injury which was in 19 – in the 1990 range both have a bearing on his need for the surgery for which he ultimately underwent."

Pet. Exh. 5, 9/23/98, p. 24. With regard to the cause of the left knee problems, the doctor, in his testimony and in a letter dated February 14, 1997, stated that some of the findings are related to wear and tear, but it could also have been aggravated by his altered gait and favoring of the extremity due to his right knee problems and the high tibial osteotomy.

The employer introduced the deposition testimony of Dr. Reilly, an orthopedic specialist, who evaluated the employee on two (2) occasions, July 1, 1994 and May 12, 1997, at the request of the employer. He explained that patients with a history of open meniscectomy were more prone to developing osteoarthritis. He noted that in Mr. Pollock's case, the arthritis in the inside of his right knee was most likely the result of the open meniscectomy in 1980 and eventually led to the high tibial osteotomy.

The employee advised Dr. Reilly that his left knee had been bothering him for some time, but his complaints had increased from October to November of 1996. He testified that after examining the employee on May 12, 1997, he diagnosed the employee with left knee synovitis,

secondary to medial compartment arthritis and potential osteochondritis dissecans. Following this evaluation, Dr. Reilly stated that he did not believe that the left knee problems were caused by compensating for the right knee injuries. He stated that increasing the stress to the left lower extremity would not cause arthritis. The doctor also testified that while kneeling repetitively on the left knee could cause problems, those problems would likely be patellofemoral, (within the kneecap), rather than in the medial compartment. Dr. Reilly testified that it has not been established that repetitive use causes arthritis and that the causes of the condition are generally unknown. He reiterated that he did not believe that the employee's left knee problems related to either the return to work, the repetitive kneeling, or the prior right knee trauma.

On cross-examination, the doctor admitted that he did not have an opinion concerning the specific cause of the employee's left knee osteoarthritis, but reiterated his belief that the right knee injury did not cause the left knee problems. Dr. Reilly also testified that orthopedists were unable to determine the cause of arthritis and that he could not ascertain whether work activities aggravated the employee's preexisting arthritic condition in his left knee. In explaining this position, Dr. Reilly stated, "I think there's a very strong case to say he has arthritis that became symptomatic. Work didn't do it." Resp. Exh. 3, p. 33.

The employer also presented the testimony of Dr. Willetts, an orthopedic surgeon appointed by the court to conduct an impartial medical examination of the employee. When asked about the relationship between the right knee injuries and surgeries and the left knee condition, the doctor responded:

> "It's difficult to say it in an exact blanket statement like that. I think there were preexisting problems, and then there were re-injuries and aggravations of those problems. My opinion was that the high tibial osteotomy was done because of some increased problems that resulted from the 1990 injury, and as an indirect result of that high tibial osteotomy, according to Mr. Pollock, he

> rather exclusively knelt on his opposite left knee, and it was that combination that resulted in his left knee, which no doubt had some preexisting degeneration. That's what led the left knee to become significantly more symptomatic."

Resp. Exh. 4, p. 4. The doctor stated that the employee's weight transference following the high tibial osteotomy caused the need for treatment on the left side. He also admitted that the employee's medical records showed evidence of medial compartment arthritis of the left knee.

Dr. Willetts stated that he did not entirely agree with the opinions rendered by Dr. Froehlich, however, he did acknowledge that the type of procedure performed on the employee in 1980 typically leads to arthritis. He also noted that medial compartment arthritis can arise without any specific trauma or repetitive activity, and that the medical literature espouses alternative views concerning causation.

Upon examination by the employee's attorney, Dr. Willetts testified that the employee's 1990 right knee injury aggravated a preexisting condition. Further, he stated that increased stress the employee placed on the left knee rather than the operated right one likely caused the symptoms in the already degenerated left knee. Dr. Willetts specifically testified:

> "I think it was a significant aggravation of what already probably was somewhat degenerative in his left knee. What I've tried to state as my opinion is that it was that increased stress upon the left knee that significantly aggravated and brought to light the symptoms that were not documented to be present before November 1996 and were the result of this kneeling on the left knee, compensating for the right knee in 1995 and 1996."

Resp. Exh. 4, p. 17.

At the conclusion of the evidence, the trial judge denied W.C.C. No. 97-07525, the employee's original petition seeking benefits for an injury sustained December 27, 1980. He reasoned that, although he believed the employee did sustain an injury in 1980, the statutory period for bringing such claims had expired. The trial judge also denied W.C.C. No. 98-00104,

the employee's original petition seeking the payment of medical benefits for injuries to the right hand and left knee occurring as a result of constant bending, stooping, crouching, and kneeling. There, the judge found that there was no medical evidence to support such an allegation.

In addition, W.C.C. No. 98-01451, an employee's original petition requesting payment of Dr. Froehlich's medical bill for treatment of injuries to the right and left knees which occurred about December 1996 due to repetitive activity. Employee's Petition to Review Medical Charges seeking payment of Dr. Froehlich's medical bills was also denied. Again, the trial judge found that the medical evidence did not support that allegation.

Finally, the trial judge granted W.C.C. No. 97-02065, the employee's petition to review alleging that the employer had refused to pay Dr. Froehlich's medical bill in the amount of Nine Hundred Thirty-five and 50/100 ($935.50) Dollars. The trial judge, relying upon the opinions expressed by Dr. Willetts, concluded that the treatment rendered by Dr. Froehlich to the employee's left knee was necessary to cure, rehabilitate, or relieve the employee of the effects of injuries that he suffered in both 1980 and 1990. The trial judge further concluded that since the 1980 injury is not compensable because of the failure to file within the appropriate period of limitations, the respondent was responsible for only fifty percent (50%) of Dr. Froehlich's outstanding bill. The employee filed a claim of appeal in each of the four (4) cases.

It is essential to note that the only questions on appeal are those raised by the employee. He has argued that the trial judge misconstrued the evidence presented and the applicable law. The employee contends that the court should have determined either that the employer remained answerable for the 1980 injury despite the passage of time, or that the medical evidence demonstrated an aggravation of the preexisting condition entitling the employee to a full benefit. In particular, he attacks the court's apportionment of causation and suggests that the evidence

requires the award of a full benefit. It is significant that the employer has not filed any appeals in these matters.

Pursuant to R.I.G.L. § 28-35-28(b), the Appellate Division must adhere to the trial judge's findings on factual matters in the absence of clear error. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division is empowered to conduct a *de novo* review only upon a finding that the trial judge clearly erred. Id. If the record before the Appellate Division demonstrates evidence sufficient to support the trial judge's findings, the decision must stand. Mindful of this standard, we have carefully reviewed the entire record of this proceeding and for the reasons set forth we find no merit in the employee's appeal.

The Rhode Island Supreme Court has held that unlike other statutes of limitations, those periods of limitation specified in the Workers' Compensation Act are considered statutes of repose. Salazar v. Machine Works, Inc., 665 A.2d 567, 568 (R.I. 1995). The difference is that ". . . a 'statute of limitations' bars a right of action unless the action is filed within a specified period after an injury occurs whereas a 'statute of repose' terminates any right of action after a specific time has elapsed irrespective of whether there has as yet been an injury." Id.

Rhode Island General Laws (1979 Reenactment) § 28-35-57, the relevant statute as it existed at the time of the employee's initial right knee injury in 1980, states in pertinent part:

> **"Limitation of claims for compensation. –** (a) An employee's claim for compensation under chapters 29 to 38, inclusive, of this title shall be barred unless an agreement or a petition, as provided in this chapter, shall be filed within three (3) years after the occurrence or manifestation of the injury or incapacity, or in case of the death of the employee, or in the event of his or her physical or mental incapacity, within three (3) years after the death of the employee or the removal of the physical or mental incapacity."

R.I.G.L. (1979 Reenactment) § 28-35-57.

In Gomes v. Bristol Manufacturing Corp., 94 R.I. 500, 504, 182 A.2d 318, 320 (R.I. 1962), the Rhode Island Supreme Court determined that submission of nonprejudicial agreements to the Director of Labor amounted to the filing of a memorandum of agreement and functioned as compliance with the statute of limitations. Further, the Court, in Aragao v. American Emery Wheel Works, 453 A.2d 762, 764 (R.I. 1982), found that an employer's compensation payments to an employee in such instances does not waive the statute of limitations, but rather tolls the period in which the statute begins to run until the last payment is made.

In the case at bar, the employee allegedly sustained an injury to his right knee on or about December 27, 1979. Pursuant to the relevant statute in effect at the time of the injury, the employee had three (3) years to memorialize this injury before any cause of action related to such an injury would terminate. The employer filed a nonprejudicial agreement with the Department of Labor on April 8, 1981 providing for the payment of benefits for an incapacity beginning December 29, 1980. Subsequently, the parties filed a suspension agreement with the Department reflecting that the employer's payments to the employee would cease February 6, 1981. Since some payments were made to the employee, the statutory period for the employee's claim regarding his first right knee injury began February 6, 1981 and ceased three (3) years thereafter. *See* Gomes, *supra*; Aragao, *supra.* Because the employee failed to file a claim within this prescribed time, he effectively surrendered any potential claim for benefits for the 1980 injury on February 6, 1984, three (3) years from the date of last payment. Therefore, in order for the employee to obtain benefits for the left knee condition, he must demonstrate that the 1990 injury is the competent producing cause.

It is axiomatic that the petitioning party bears the burden of producing competent legal evidence establishing the essential elements that entitle him to relief under the Workers' Compensation Act. Soprano Construction Co., Inc. v. Maia, 431 A.2d 1223, 1225 (R.I. 1981). It is well-settled that an employee must demonstrate a correlation between the alleged disability and employment in order to qualify for benefits. *See* Woods v. Safeway Sys., Inc., 101 R.I. 343, 223 A.2d 347 (1966). While some work-related accidents accompanied by marked symptoms support the inference that the injury arose out of the employment, most scenarios require the production of competent medical evidence in order to demonstrate this connection. Valente v. Bourne Mills, 77 R.I. 274, 278-79, 75 A.2d 191, 194 (1950). At a minimum, the medical evidence must show that the disability or medical treatment is a probable result of a work-related incident in order to sustain the petition. Woods, *supra*; Hicks v. Vennerbeck & Clase Co., 525 A.2d 37, 42 (R.I. 1987).

In the case at bar, the trial judge discussed all of the medical evidence in considerable detail. Three (3) physicians offered medical testimony concerning the cause of the employee's left knee condition. Dr. Froehlich stated consistently throughout his testimony that the employee's ongoing right knee problems, dating back to 1980, caused the left knee condition. Dr. Reilly, on the other hand, refused to relate the left knee condition to the employee's right knee injuries. After assiduously reviewing all of this evidence, the trial judge chose to rely on the court-appointed medical examiner, Dr. Willetts, to resolve this conflict. The trial judge determined that Dr. Willetts attributed the employee's right knee problems to both of the injuries and that the problems associated therewith caused the employee to overuse his left knee which eventually caused the condition. Based upon that, he refused to award payment for any treatment which he found related to the 1980 injury. While we agree with this principle, the

record demonstrated that the impartial examiner's opinions support a finding of medical causation.

Based upon our review of Dr. Willetts' deposition, we are forced to conclude that the trial judge overlooked the doctor's testimony that the employee's left knee condition was a direct result of the 1990 injury and the ensuing treatment. In his deposition, Dr. Willetts was asked:

> "Q: So you think that the symptoms and the condition which has necessitated treatment on the left side is the result of his weight transference following and as a result of the HTO?
>
> "A: Yes."

Resp. Exh. 4, p. 5. In further questioning, Dr. Willetts was interrogated on the basis for his opinion and essentially stated that the root of the employee's problem stretched back to his original injury in 1980. He went on to note, however, that Mr. Pollock's subsequent trauma in 1990 and his efforts to compensate for his new problems, placed additional stress on his opposite knee and accelerated the need for treatment. Thus, there was competent medical evidence implicating the 1990 right knee injury as the cause of the left knee problem.

In Lomba v. Providence Gravure, Inc., 465 A.2d 186 (R.I. 1983), Justice Shea discussed the type of aggravation alleged in the case at bar:

> ". . . the employee is suffering from a preexisting disease or infirmity, that the employment aggravates or accelerates to produce a disability. . . . With this type of aggravation, the employee is not required to show that the original infirmity or disease arose out of or in the course of employment. He must merely demonstrate that the employment aggravated the preexisting condition." (Emphasis added.)

Id. at 188.

We agree with the trial judge that the employee's treating physician did not provide a competent opinion on this issue. Dr. Froehlich testified that it was ". . . not clear cut as to when

his left knee – to which event, I guess, you can attribute his left knee process . . ." Pet. Exh. 5, p. 17. However, the impartial examiner appointed by the court did testify that the left knee condition flowed from the work-related right knee injury in 1990. While the doctor's opinions were inartfully expressed, they were competent to demonstrate causation.

Moreover, we cannot determine a legal basis for apportionment of medical expenses in the absence of a finding that the condition is an occupational disease cognizable under the provisions of Chapter 34 of Title 28 of the Rhode Island General Laws. If, in fact, the evidence demonstrated that the condition was due to the peculiar characteristics of Mr. Pollock's employment, benefits would be payable pursuant to R.I.G.L. § 28-34-1, et. seq., as an occupational disease. This chapter includes several unique aspects. In particular, R.I.G.L. § 28-34-7 specifically notes that:

> "Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable shall be the proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as that occupational disease, as a causative factor, bears to all the causes of the disability or death, ..."

This section has been applied to those cases where the underlying contributing condition is the result of work-related activity which is deemed noncompensable. *See* Vater v. HB Group, 667 A.2d 283 (R.I. 1995). In Vater, *supra*, several of the contributing employers were beyond Rhode Island jurisdiction. The Court held that the noncompensable disability would reduce the employee's weekly benefit pursuant to this section. This section has also been applied to reduce the employer's liability for medical expenses. *See* Shurick v. Ames American Co., 96 R.I. 181, 190 A.2d 217 (1963).

The evidence in the pending matter does not justify a finding that the disability or need for medical treatment was due to the peculiar nature and characteristics of the petitioner's employment. To the contrary, the court specifically found that the employee's knee problems were not due to the constant bending, stooping, crouching, and kneeling required by his employment. (W.C.C. No. 98-01451) As we have discussed, this finding is fully supported by the evidence adduced. Thus, there is no legal or factual basis for a finding that the knee problems were due to an occupational disease. In the absence of such a determination, we are left with the opinion of Dr. Willetts that the subsequent injury aggravated the preexisting noncompensable problem and necessitated treatment.

Based on the foregoing, we find no error on the part of the trial judge in finding that the employee's claim for benefits for injuries sustained in 1980 is barred by the statute of limitations. Moreover, we concur with the court's finding that the compensable injury of July 18, 1990 was the competent producing cause of the left knee condition which necessitated the treatment by Dr. Froehlich and the charges which comprise the subject matter of the petition in W.C.C. No. 97-02065. We must however, reverse the trial court's determination that since the compensable injury was only a partial cause of the condition the charges for treatment should be apportioned.

Thus, the employee's claims of appeal in W.C.C. Nos. 97-07525, 98-00104, and 98-01451 are hereby denied and dismissed. The appeal of the employee in W.C.C. No. 97-02065 is granted. In accordance with our decision, a new decree shall enter containing the following findings and orders:

1. That the employee has demonstrated by a fair preponderance of the credible evidence that the employer has refused to pay for or provide medical services necessary to cure, relieve, or

rehabilitate him from the effects of the work-related injury he sustained to his right knee on July 18, 1990.

2. That the employee has demonstrated that the services provided by Dr. John A. Froehlich with reference to the employee's left knee flowed from and were a result of the work-related right knee injury he suffered on July 18, 1990.

3. That the employee has demonstrated that the charges of Dr. Froehlich for those medical services were fair and reasonable.

It is, therefore, ordered:

1. That the employer shall pay the charges of Dr. John A. Froehlich in the amount of Nine Hundred Thirty-five and 50/100 ($935.50) Dollars.

2. That the employer is entitled to credit for all sums previously paid to Dr. Froehlich under earlier orders or decrees.

3. That since this appeal was successfully prosecuted, the employer shall reimburse Jack R. DeGiovanni, Jr., Esq., counsel for the employee, the sums of Six Hundred and 00/100 ($600.00) Dollars and Twenty-five and 00/100 ($25.00) Dollars for the cost of the trial transcript and the filing of the claim of appeal.

4. That the employer shall pay an additional counsel fee in the amount of Three Thousand and 00/100 ($3,000.00) Dollars to Jack R. DeGiovanni, Jr., Esq., counsel for the employee, for the successful prosecution of this appeal.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on

Rotondi and Sowa, JJ. concur.

ENTER:

_____
Rotondi, J.

_____
Healy, C.J.

_____
Sowa, J.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

EDWARD POLLOCK)
)
VS.) W.C.C. 97-02065
)
DUPUIS OIL COMPANY)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee from a decree entered on August 18, 1999.

Upon consideration thereof, the appeal of the employee is granted, and in accordance with the decision of the Appellate Division, the following findings of fact are made:

1. That the employee has demonstrated by a fair preponderance of the credible evidence that the employer has refused to pay for or provide medical services necessary to cure, relieve, or rehabilitate him from the effects of the work-related injury he sustained to his right knee on July 18, 1990.

2. That the employee has demonstrated that the services provided by Dr. John A. Froehlich with reference to the employee's left knee flowed from and were a result of the work-related right knee injury he suffered on July 18, 1990.

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3. That since this appeal was successfully prosecuted, the employer shall reimburse Jack R. DeGiovanni, Jr., Esq., counsel for the employee, the sums of Six Hundred and 00/100 ($600.00) Dollars and Twenty-five and 00/100 ($25.00) Dollars for the cost of the trial transcript and the filing of the claim of appeal.

4. That the employer shall pay an additional counsel fee in the amount of Three Thousand and 00/100 ($3,000.00) Dollars to Jack R. DeGiovanni, Jr., Esq., counsel for the employee, for the successful prosecution of this appeal.

Entered as the final decree of this Court this day of

BY ORDER:

_____

John A. Sabatini, Administrator

ENTER:

_____
Rotondi, J.

_____
Healy, C. J.

_____
Sowa, J.

I hereby certify that copies of the Decision and Final Decrees of the Appellate Division were mailed to Jack R. DeGiovanni, Jr., Esq., Howard. L. Feldman, Esq., James T. Hornstein, Esq., and Jeffrey M. Liptrot, Esq., on

_____

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

EDWARD POLLOCK)
)
VS.) W.C.C. 97-07525
)
DUPUIS OIL COMPANY)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on August 18, 1999 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Rotondi, J.

_____
Healy, C. J.

_____
Sowa, J.

I hereby certify that copies of the Decision and Final Decrees of the Appellate Division were mailed to Jack R. DeGiovanni, Jr., Esq., Howard. L. Feldman, Esq., James T. Hornstein, Esq., and Jeffrey M. Liptrot, Esq., on

_____

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

EDWARD POLLOCK)
)
VS.) W.C.C. 98-00104
)
DUPUIS OIL COMPANY)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on August 18, 1999 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Rotondi, J.

_____
Healy, C. J.

_____
Sowa, J.

I hereby certify that copies of the Decision and Final Decrees of the Appellate Division were mailed to Jack R. DeGiovanni, Jr., Esq., Howard. L. Feldman, Esq., James T. Hornstein, Esq., and Jeffrey M. Liptrot, Esq., on

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

EDWARD POLLOCK)
)
VS.) W.C.C. 98-01451
)
DUPUIS OIL COMPANY)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on August 18, 1999 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

BY ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Rotondi, J.

_____
Healy, C. J.

_____
Sowa, J.

I hereby certify that copies of the Decision and Final Decrees of the Appellate Division were mailed to Jack R. DeGiovanni, Jr., Esq., Howard. L. Feldman, Esq., James T. Hornstein, Esq., and Jeffrey M. Liptrot, Esq., on

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