IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON

JOE BARGANSKI,

Petitioner,

and

CENTRE FOUNDRY & MACHINE CO.,

Respondent.

Sup. Ct. No.: 20-0216
Appeal No.: 2054671
Claim No.: 2017025584
JCN: 2018005926
DOI: 09/01/2017
Date of ALJ Decision: 09/26/2019
Date of BOR Decision: 02/20/2020

CENTRE FOUNDRY & MACHINE CO.'S RESPONSE TO PETITION FOR APPEAL

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TO THE HONORABLE JUSTICES OF THE
WEST VIRGINIA SUPREME COURT OF APPEALS:

STATEMENT OF THE CASE

This claim is in litigation pursuant to the claimant's protest to the two BrickStreet orders dated December 18, 2017 and February 8, 2018, which denied the additional diagnosis of septic knee, as well as diagnostic testing, hospitalization, and surgical intervention for that condition. The Office of Judges entered a decision on September 26, 2019, which properly affirmed these two orders. Upon the claimant's appeal, the Workers' Compensation Board of Review affirmed the Administrative Law Judge decision on February 20, 2020. The issue of temporary total disability benefits that was addressed by the Administrative Law Judge and the

Board of Review is not on appeal before this Honorable Court. In regard to the claimant's appeal from the order affirming the denied diagnosis orders, the Administrative Law Judge properly found that the claimant failed to establish, based upon the preponderance of the evidence standard, that the secondary conditions should be considered compensable in the claim. The Administrative Law Judge properly found that the preponderance of the medical evidence demonstrates that the septic knee condition should not be considered related to the injury of September 1, 2017. The Board of Review properly affirmed that decision.

STATEMENT OF FACTS

The employer completed a telephonic report of injury regarding the claimant's right knee injury that occurred when the claimant was working on the roof at the facility. (See Exhibit 11 attached hereto at pp. 51-54.) His left foot slipped out from under him and he fell to his bottom twisting his right knee. An accident report from Centre Foundry & Machine Company was submitted showing that the claimant suffered the accident on September 1, 2017, when the claimant was falling and went down on his right knee. (See Exhibit 15 attached to Claimant's Petition.)

The claimant completed a report of injury on September 7, 2017, indicating he injured his right knee on September 1, 2017. (See Exhibit 12 attached to Claimant's Petition.) He indicated that he slipped causing his injury. He indicated that he stopped working in regard to the injury on September 5, 2017. The physician's report of injury was completed at Corporate Health on September 7, 2017. The claimant was diagnosed with a right knee sprain. The claimant treated on September 7, 2017 regarding the September 1, 2017 injury at Corporate Health. (Id.) The claimant indicated to the treating physician that he was carrying large pieces of steel on a catwalk. The claimant indicated that he slipped on a slick surface causing him to twist

his right knee. He also indicated that he dropped the steel that he was carrying directly on top of his right knee. He was able to complete his shift that day but that he was scheduled off since the injury. When he returned to work, he sought treatment at Corporate Health. He was diagnosed with a right knee contusion with possible concerns of internal derangement.

The claimant went to the Wheeling Hospital Emergency Department on September 7, 2017, with complaints of right knee pain. (See Exhibit 12 attached hereto at pp. 55-60.) He presented to the Emergency Department with complaints of a right knee injury. He indicated that the injury had happened on the previous Friday, while walking on a wet tin roof. The claimant was shown to have a past surgical history of a right knee surgery and also a past infection history with a diagnosis of Clostridium Difficile toxin (C diff) and Mmethicillin Resistant Staph Aureus (MRSA). The claimant underwent an x-ray of his right knee, which indicated that he was status post right total knee arthroplasty with a comparison from October 18, 2016. The x-ray showed no acute findings status post right total knee arthroplasty.

The claimant was seen by Dr. Jeffrey Abbott on September 14, 2017, with complaints of daily right knee pain after his incident. (See Exhibit 11 attached to Claimant's Petition.) The claimant's right knee was aspirated at the time of milky fluid. The synovial fluid was sent for analysis. The claimant returned to see Dr. Abbott on September 15, 2017. (See Exhibit 9 attached to Claimant's Petition.) He still complained of right knee pain. He was diagnosed with an infection of his previous total right knee replacement. It was listed as an acute problem referring to infection and inflammatory action due to internal right knee prosthesis. He noted that the claimant needs irrigation and debridement with poly exchange, possible explant and static antibiotic spacer.

The claimant was seen by Dr. Brown-Brocklehurst on September 18, 2017. (See Exhibit 13 attached hereto at pp. 61-66.) She noted that the claimant had previously had a right knee replacement one year prior, which had become infected and then had additional trauma resulting from a fall in early September of that year. He was seeing Dr. Abbott in regard to status post revision, incision drainage, and antibiotic spacer. The claimant underwent an operation with Dr. Abbott on September 18, 2017, at which time he was diagnosed with an infected right total knee arthroplasty and underwent an explant of total knee arthroplasty, radical synovectomy and antibiotic cement knee fusion. (See Exhibit 14 attached hereto at pp. 67-68.) The operative report showed that the claimant had a previous right total knee arthroplasty done approximately eleven (11) months ago and then that he had presented to Dr. Abbott's office with a big swollen right knee. The work up in the office showed that the claimant had an infected right total knee arthroplasty.

The claimant was seen by Dr. Fukuta, an infectious disease physician, on September 19, 2017, for consultation regarding his right prosthetic knee joint infection. (See Exhibit 7 attached to Claimant's Petition.) She noted that she previously did take care of the claimant in February 2016, when he was hospitalized with MRSA complicated with empyema, discitis, and C diff infection. The claimant had a prolonged hospital course at that time, but improved with Vancomycin. She noted that claimant had undergone total right knee replacement on October 18, 2016. Dr. Fukuta noted that she was consulted for antibiotic management. She noted that his fluid culture from the testing with Dr. Abbott was growing streptococcus viridans and given his history with MRSA, she was going to treat him with Vancomycin.

Dr. Rebecca Thaxton completed a physician review on September 26, 2017, regarding whether or not the medical evidence supports that the claimant's work injury caused

the right knee infection. (See Exhibit 15 attached hereto at p. 69.) She noted the claimant's previous MRSA infections and indicated that blunt trauma to the right knee could have compromised the tissue.

The claimant saw Dr. Fukuta again on November 1, 2017 for follow up regarding treatment for his infection. (See Exhibit 6 attached to Claimant's Petition.) She noted the claimant's diagnosis of infection of prosthetic knee joint, and streptococcal arthrtitis of right knee. She also noted that the claimant had been colonized with MRSA. The claimant returned to see Dr. Abbott on November 2, 2017 for follow up care. (See Exhibit 16 attached hereto at pp. 70-71.) Additional testing was completed and he was to follow up in two (2) weeks for aspiration. The claimant saw Dr. Abbot on November 16, 2017, as which time his knee was aspirated and the fluid was sent for testing. (See Exhibit 17 attached hereto at pp. 72-73.)

A medical record review was completed by Dr. Kelly Agnew on November 20, 2017 regarding whether the claimant's right knee replacement infection was related to the work incident. (See Exhibit 18 attached hereto at pp. 74-79.) He noted that a close evaluation of the operative notes shows that gross puss was encountered. The femur and tibia were grossly loosened and expression of purulent material was documented from beneath the femoral implant. He indicated that these findings would be supportive of a chronic infectious presentation, which could not have arisen in the seventeen (17) days. His impressions of the claimant included history of right total knee arthroplasty from October 18, 2016, unrelated to occupational issues; right knee injury from September 1, 2017, allowed for contusion, with no evidence of structural damage or skin penetration; and history of irrigation, debridement, and explanation of total knee implant; and September 18, 2017, operative findings of chronic infection. Upon review of the medical records, he found that the claimant had a septic total knee

arthroplasty, which is a recognized complication of total knee arthroplasty. The organism found in regard to the infection is streptococcus viridans, which is considered normal flora in the respiratory tract, but can also be involved in dental disease. Again, he noted that a review of the operative report shows that the infection reflected a chronic involvement as described with infection extending beneath the implants on both the femur and tibia and, in fact, gross loosening of those implants. He indicated that loosening of implants is not a finding that is consistent with a seventeen (17) day infection, but rather is a chronic infection finding. Based upon all of the information reviewed, Dr. Agnew conclusively stated that the September 1, 2017 reported worksite event did not cause the septic total knee arthroplasty in this case. There was no documentation of abrasion or laceration to actually penetrate the skin and multiple records failed to even document ecchymosis as a suggestion of significant soft tissue damage. Importantly, he noted that the operative findings are absolutely chronic and could not have arisen in seventeen (17) days. Accordingly, he found no direct and causal relationship between the September 1, 2017 incident and the diagnosis of septic knee, the diagnostic testing, hospitalization, and surgical intervention. He indicated that all of these treatments were appropriate, but identified a chronic process.

Dr. Stoll completed an additional physician review on December 8, 2017 and concurred with the opinion with Dr. Agnew regarding the lack of objective documentation to support that the claimant's right septic knee, hospitalization treatment, and future reimplantation of his total knee arthroplasty are causally related to the compensable diagnosis in the claim. (See Exhibit 19 attached hereto at pp. 80-81.) BrickStreet entered a separate order on December 18, 2017, finding that the diagnosis of right septic knee, the diagnostic testing, the hospitalization,

and surgical intervention regarding this condition is not related to the work event. (See Exhibit 18 attached to Claimant's Petition.) The only compensable condition is right knee contusion.

The claimant returned to see Dr. Abbott on February 2, 2018, at which time he noted that the claimant was ready to proceed with the revision of his right total knee arthroplasty. (See Exhibit 5 attached to Claimant's Petition.) The claimant had grieved the December 18, 2017 order, and on February 8, 2018, the Grievance Board determined that the denial of the request to add septic knee and denial of diagnostic testing, hospitalization, and surgical intervention is appropriate and should be affirmed. (See Exhibit 20 attached hereto at pp. 82-83.) BrickStreet entered an order affirming the December 18, 2017 order on February 8, 2018, and the claimant protested that decision. (See Exhibit 19 attached to Claimant's Petition.) The claimant returned to see Dr. Abbott on February 20, 2018, at which time he noted that the claimant is scheduled for a right knee total revision on March 6, 2018. (See Exhibit 4 attached to Claimant's Petition.) The claimant underwent a revision of the right total knee arthroplasty on March 6, 2018. (See Exhibit 3 attached to Claimant's Petition.) He was stable post-operatively. BrickStreet also closed the claim for the payment of temporary total disability benefits on March 18, 2018, as he was not disabled for more than three (3) days in regard to the sole compensable condition in the claim, right knee contusion. The claimant protested the orders ruling the claim compensable for right knee contusion only, denying the request to add right septic knee and denying treatment for that condition, and also closing the claim for the payment of temporary total disability benefits.

The claimant testified in regard to these protests on June 21, 2018. (See Exhibit 1 attached to Claimant's Petition.) According to the claimant, he believes he was injured on August 25, 2017; however, it does appear that the medical and factual records support that the

injury occurred on September 1, 2017. He was carrying some old wood and steel on a catwalk when he fell to his right knee, according to his deposition testimony. However, the early medical records and reports of injury show that it is likely that the claimant did not fall to his right knee, but possibly twisted his right knee and then dropped the wood and steel on his right knee. There is some inconsistency regarding how the injury was described. The claimant did complete a work accident. He testified that he worked until September 1, 2017, and was advised to complete a new accident report. He then was seen at Corporate Health on September 7, 2017, and was sent to the emergency room, where he was immediately referred to Dr. Abbott. He saw Dr. Abbott again on September 14, 2017 and had surgery on September 18, 2017. He indicated that his knee was infected. He indicated that his knee was essentially removed and a spacer was put in. He also had a new knee implantation on March 6, 2018. He testified that he tried to return to work, but he has not been able to. He had surgery again on May 13, 2018, as he had additional infection on his knee. He has been treating with an infectious disease specialist, Dr. Fukuta, and is currently on IV antibiotics. He testified that Dr. Fukuta told him that it is likely that the old blood in his knee became infected when he hit it. He testified that he had a prior knee replacement on October 18, 2016. He does not remember any treatment for infection in regard to that surgery; however, the medical reports from November 2016 and December 2016, show that he was on antibiotics. He testified that he his knee problems started in 1994 when he tore his ACL and he underwent his first surgery then.

Additional medical records were submitted beginning with emergency room records from Wheeling Hospital from February 4, 2016, noting right knee pain due to work injury. (See Exhibit 1 attached hereto at pp. 1-7.) The x-rays of the right knee revealed moderately large joint effusion, moderate to severe osteoarthritis, and possible small foreign

body along superficial margin of patellar tendon. He returned to the emergency room on February 9, 2016, at which time he complained of pain in the left lower leg, fever, and chills. (See Exhibit 2 attached hereto at pp. 8-22.) He was diagnosed with severe sepsis, left leg thrombophlebitis with cellulitis and admitted to inpatient status. He was discharged from Wheeling Hospital on February 28, 2016, with a diagnosis of severe sepsis and MRSA infection. (See Exhibit 3 attached hereto at p. 23.) He had x-rays of his right knee on February 23, 2016, which showed varus deformity due to bone-on-bone articulation and joint space loss to medial compartment; subcondral sclerosis; osteophyte formation; and moderate joint effusion. (See Exhibit 4 attached hereto at p. 24.) He underwent a right total knee replacement on October 18, 2016 with Dr. Allen Tissenbaum. (See Exhibit 5 attached hereto at p. 25.) He was treated at Wound Care on November 2, 2016. (See Exhibit 6 attached hereto at pp. 26-32.) The records show that the claimant indicated that his right knee was improving and he had minimal knee pain. He had removed some of his surgical staples. There was some drainage from the surgical incision so he was placed on antibiotics. The claimant returned to the emergency room on December 7, 2016 at Wheeling Hospital, at which time he was noted to have right ankle swelling since returning to work a week ago after the knee replacement surgery. (See Exhibit 7 attached hereto at pp. 33-38.) He was noted to have a past history of DVT, sepsis, HTN, and MRSA. On December 11, 2016, he underwent a consultation with Dr. Maevsky, at which time he had no evidence of deep venous thrombosis. (See Exhibit 8 attached hereto at p. 39.) The claimant returned to the emergency room on April 11, 2017 with complaints of bilateral foot swelling over the last two weeks. (See Exhibit 9 attached hereto at pp. 40-44.) He was seen by Dr. Brown-Brocklehurst on July 26, 2017 for a number of chronic conditions including previous infection treatment. (See Exhibit 10 attached hereto at pp. 45-50.)

In support of his protest to the orders denying the additional secondary condition of septic knee and treatment, the claimant submitted his deposition transcript; September 5, 2017 report of injury; September 5, 2017 emergency room records; September 7, 2017 report of injury; medical records from September 7, 2017 through September 18, 2017; additional medical records from November 1, 2017 through December 8, 2017; medical records from February 2, 2018, February 8, 2018, February 20, 2018, and March 6, 2018; and March 18, 2018 order closing temporary total disability benefits. All of the medical records submitted by the claimant have been described above.

The protests to the BrickStreet orders dated December 18, 2017, February 8, 2018, and March 18, 2018 were submitted to the Office of Judges and on September 26, 2019 Administrative Law Judge Mary Katharine Morris entered a decision in which she affirmed the two BrickStreet orders dated December 18, 2017 and February 8, 2018, which denied the additional diagnoses of septic knee, and diagnostic testing, hospitalization, and surgical intervention for that condition, as well as reversed the BrickStreet order dated March 18, 2018, which closed the claim for the payment of temporary total disability benefits and granted temporary total disability benefits as substantiated by proper evidence. (See Exhibit 17 attached to Claimant's Petition.) The undersigned counsel for the employer appealed the Administrative Law Judge decision in regard to the reversal of the closing of the claim for the payment of temporary total disability benefits as the preponderance of the medical evidence does not support the payment of any temporary total disability benefits in the claim. As claimant disagreed with the Administrative Law Judge decision in regard to the affirmation of the two orders denying the request to add septic knee to the claim and denied treatment for the septic knee, he filed a notice of appeal to the Board of Review. The Board of Review properly

affirmed the Administrative Law Judge order which affirmed the two orders denying the request to add the septic knee to the claim and denying treatment for the septic knee. (See Exhibit 16 attached to Claimant's Petition.) The reversal of the order which closed the claim for the payment of temporary total disability benefits was also affirmed; however, that issue was not appealed. The claimant has now filed an appeal to this Honorable Court from the Board of Review decision regarding the secondary condition issue.

STANDARD OF REVIEW

According to West Virginia Code § 23-5-12, if a decision of an Administrative Law Judge is appealed, the Board of Review shall reverse the findings of the administrative law judge only when an administrative law judge's findings are clearly wrong in view of the reliable, probative, and substantial evidence on the whole record. The West Virginia Supreme Court of Appeals has defined the "clearly wrong" standard in its review of Board of Review cases. According to the Court, a decision is clearly wrong if it is not supported by the evidence of record, if it is clearly against the preponderance of the evidence, or if it is based upon evidence which is speculative and inadequate. *Gibson v. State Workers' Comp. Comm'r.*, 127 W. Va. 97, 31 S.E.2d 555 (1944); *Estep v. State Workers' Comp. Comm'r.*, 130 W. Va. 504, 44 S.E.2d 305 (1947); *Barnett v. State Workers' Comp. Comm'r.*, 153 W. Va. 796, 172 S.E.2d 698 (1970); *Smith v. State Workers' Comp. Comm'r.*, 155 W. Va. 883, 189 S.E.2d 838 (1972). The evidence contained in the record below shows that the Board of Review was not clearly wrong in affirming the Administrative Law Judge decision, which affirmed the BrickStreet orders denying the addition of septic knee to the claim and denying treatment for that condition.

West Virginia Code § 23-5-15 provides the appropriate procedure for appeals from final decisions of the Board of Review to the West Virginia Supreme Court of Appeals. West Virginia Code § 23-5-15(c) provides as follows:

> If the decision of the board represents an affirmation of a prior ruling by both the Commission and the Office of Judges [as in this case] that was entered on the same issue in the same claim, the decision of the Board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of the constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. The Court may not conduct a de novo re-weighing of the evidentiary record. If the Court reverses or modifies the decision of the Board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the Board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record.

The evidence contained in the record below shows that the Board of Review was not clearly wrong in affirming the Administrative Law Judge decision, which affirmed the BrickStreet orders denying the request to add the secondary condition to the claim and denied treatment for that secondary condition.

W. Va. Code § 23-5-15(c) holds that if the decision of the Board represents an affirmation of a prior ruling by both the commission and the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo re-weighing of the evidentiary record. Most recently, the

Court held that the decision of the Board may be reversed or modified only if it (1) is in clear violation of a constitutional or statutory provision; (2) is clearly the result of erroneous conclusions of law; or (3) is based upon material findings of fact that are clearly wrong. Syl. Pt. 1, *Moran v. Rosciti Construction Co., LLC*, 240 W.Va. 692, 815 S.E.2d 503, 2018 WL 2769077 (2018).

SUMMARY OF ARGUMENT

The issue currently before this Honorable Court is whether the Board of Review properly affirmed the Administrative Law Judge decision which affirmed the two BrickStreet orders finding that the claimant's septic knee should not be considered a compensable condition in the claim and treatment should not be authorized for that condition. The preponderance of the factual and medical evidence supports the two orders denying the addition of this secondary condition. The claimant failed to submit sufficient evidence to show that that decision was clearly wrong. The Administrative Law Judge and the Board of Review properly affirmed the two BrickStreet orders denying the addition of septic knee.

STATEMENT REGARDING ORAL ARGUMENT

The respondent/employer does not believe oral argument is necessary in regard to this appeal.

ARGUMENT/ RESPONSE TO ASSIGNMENT OF ERROR

THE BOARD OF REVIEW PROPERLY AFFIRMED THE ADMINISTRATIVE LAW JUDGE DECISION WHICH AFFIRMED THE TWO BRICKSTREET ORDERS WHICH DENIED THE REQUEST TO ADD THE ADDITIONAL DIAGNOSIS SEPTIC KNEE, AS WELL AS DIAGNOSTIC TESTING, HOSPITAL STAY, AND SURGICAL INTERVENTION FOR THAT CONDITION, AS THE CLAIMANT DID NOT SUBMIT SUFFICIENT EVIDENCE TO SHOW THAT THIS CONDITION AND TREATMENT SHOULD BE CONSIDERED TO BE WORK-RELATED

In the instant claim, it is clear that the Administrative Law Judge findings as affirmed by the Board of Review are correct and the claimant has shown no reason why the February 20, 2020 Board of Review decision should be reversed.

The issue to be determined by this Honorable Court is whether the Board of Review and the Administrative Law Judge properly affirmed the two BrickStreet orders dated December 18, 2017 and February 8, 2018, which denied the additional diagnosis of septic knee and treatment for the septic knee in the claim. Accordingly, this is a compensability issue governed by W. Va. Code § 23-4-1. In order for a claim to be ruled compensable, the claimant must show that he sustained a personal injury in the course of and as a result of employment. *Barnett v. State Workers' Compensation Commissioner*, 172 S.E.2d 698, 153 W. Va. 796 (1970). In order for a claim to be ruled compensable, three elements must co-exist: (1) a personal injury (2) received in the course of employment and (3) resulting from employment. *Jordan v. State Workmen's Compensation Commissioner*, 191 S.E.2d 497, 156 W. Va. 159 (1972).

The medical records show that the claimant has a history of chronic bacterial infection for which he has been treated in the past. A review of the records after the claimant's work injury from September 1, 2017, completed by Dr. Agnew, shows that the condition of his knee at the time of his surgery on September 18, 2017 supports a chronic infection, which could

not have arisen within the past seventeen (17) days. The claimant did not describe an event to support how the knee became infected. Dr. Stoll agreed with Dr. Agnew's conclusion and both found that the claimant's septic knee was not related to the work event of September 1, 2017. Accordingly, BrickStreet properly denied the request to add this condition to the claim and properly denied any treatment for that condition pursuant to W. Va. Code § 23-4-3. The claimant failed to establish, based upon the preponderance of the evidence of record as found in W. Va. Code § 23-4-1g, that the septic knee condition is related to the work injury from September 1, 2017.

In her decision, Administrative Law Judge Mary Katharine Morris properly found that the report of Dr. Agnew dated November 20, 2017 and the physician review report by Dr. Stoll dated December 8, 2017 support the finding that the septic knee should not be considered compensable in the claim and treatment for the septic knee should not be authorized in the claim. Administrative Law Judge Morris found that the claimant has submitted insufficient medical evidence to support the addition of the septic knee in the claim. The Board of Review properly affirmed Administrative Law Judge Morris' decision.

In his petition for appeal, claimant's counsel relies on the opinions of Dr. Fukuta and Dr. Abbott that the claimant's need for treatment and the additional diagnosis code of septic knee are directly related to the claimant's work-related injury and that their opinion should be afforded greater weight because they are the claimant's surgeon and infectious disease treater for this injury. The claimant first sought treatment on September 7, 2017 for his right knee contusion. Initial treatment records at Wheeling Health indicate the claimant was sent to the emergency room. The claimant was treated at the hospital on the same date and was diagnosed with a septic knee. Dr. Agnew reviewed all of the evidence and clearly found that at the time of

the claimant's surgery on September 18, 2017, the claimant had a chronic infection of his knee replacement, which could not have arisen in the past seventeen (17) days and should not be considered to be related to the work event of September 1, 2017. Even though the bacteria causing the infection were possibly different bacteria than the claimant's prior infection, there is simply no evidence to show that the claimant's work injury caused the infection. The current infection was found to be chronic and related to common bacteria in the body. Claimant's counsel also disputes the date of the occupational injury; however, that was simply based on the claimant's deposition testimony and it is clear based upon the claimant's treatment records that the injury was not sustained until September 1, 2017. Both Administrative Law Judge Morris and the Board of Review properly reviewed all of the medical records in the claim and properly found that the claimant failed to establish, based upon the preponderance of the evidence of record that the septic knee condition is related to the work injury from September 1, 2017. The brief submitted by claimant's counsel does not show that Administrative Law Judge Morris' decision is in violation of statutory provisions; in excess of the statutory authority or jurisdiction; made upon unlawful procedure; affected by other error of law; clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or arbitrary, capricious, or characterized by abuse of discretion. Claimant's counsel also failed to show that the Board of Review's decision in regard to this appeal was improper in light of the reliable, substantial, and probative evidence on the record.

CONCLUSION

For the foregoing reasons, the employer respectfully requests that the claimant's petition for appeal from the Board of Review decision dated February 20, 2020, be affirmed.

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