WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: **2758/19 and 3110/19**
Applicant: **Rosemary Tilley**
Respondent: **State of New South Wales**
Date of Determination: **1 October 2019**
Citation: **[2019] NSWWCC 318**

The Commission determines:

1. The applicant suffered a consequential condition to her left knee as a result of an accepted right knee injury in the course of her employment with the respondent on 8 July 2011.

2. The respondent is to pay for the costs of and associated with the total left knee replacement surgery, which is reasonably necessary.

3. Award for the respondent on the claim for the cost of right carpal tunnel release surgery.

A brief statement is attached setting out the Commission's reasons for the determination.

Cameron Burge
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF CAMERON BURGE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. The factual background to this matter is lengthy but largely uncontroversial. Rosemary Tilley (the applicant) brings two sets of proceedings which were directed to be heard together. Each set of proceedings is brought against her former employer, the State of New South Wales (the respondent).

2. The first proceeding (number 2758/19) is a claim for a left total knee replacement which is said to arise from a consequential condition to that body part as a result of an injury which took place on 8 July 2011. On that date, the applicant was assaulted during the course of her employment by a patient and suffered an injury to her right wrist, liability for which injury was accepted. On 4 December 2012, the applicant was on her way to work when she was bumped from behind whilst at Harris Park railway station. Owing to her inability to steady herself with her right hand, she fell and injured her right upper limb and right knee. Previous proceedings in the Workers Compensation Commission determined that fall was compensable, and the applicant therefore underwent a right knee replacement paid for by the respondent.

3. The applicant alleges that as a result of favouring her right leg and the over-reliance placed on the left knee, the latter continuously gave out and she suffered a twisting injury in November 2017 when she fell in the shower, fracturing her left scaphoid and further injuring the left knee.

4. On 26 March 2019, the respondent's insurer issued a section 78 notice in which they denied liability for any consequential condition sustained to the applicant's left knee. In that notice, the respondent relied on section 4 of the *Workers Compensation Act 1987* (the 1987 Act), section 4(b)(i) of the 1987 Act, section 4(b)(ii) of the 1987 Act and section 9A of the 1987 Act.

5. The medical necessity of the left knee replacement is not in issue. Rather, the question for determination before the Commission is the cause of the requirement for that necessary procedure.

6. The second proceeding (matter number 3110/19) is a claim for carpal tunnel release surgery allegedly arising from the injury on 8 July 2011, the circumstances of which are set out at [2] above.

7. As noted, the applicant first injured her right wrist after being assaulted by a patient at work. She was referred to Dr Simon Chan, who performed surgery on 12 June 2012, which surgery was approved and paid for by the respondent's insurer. The applicant suffered a post-operative infection to her right wrist and had further surgery. The applicant has since been recommended for further surgery by way of carpal tunnel release on her right thumb by Dr Chan, however, liability for that surgery has been declined in accordance with a section 78 notice issued by the respondent's insurer dated 23 May 2019. The basis for denial of the liability for the carpal tunnel release is that the applicant's employment was not a substantial contributing factor to the carpal tunnel condition, as required under section 9A of the 1987 Act.

8. As a result of the respective section 78 notices, the applicant commenced separate sets of proceedings in relation to her claims for future surgery to each of the allegedly injured body parts. At separate telephone conferences, the proceedings were merged, and were subject to a hearing on 6 August 2019.

ISSUES FOR DETERMINATION

9. The parties agree that the following issues remain in dispute:

    (a) Whether the applicant's employment with the respondent was a substantial contributing factor to the development of carpal tunnel syndrome in her right wrist which requires surgery for release, and

    (b) Whether the applicant suffered a consequential condition to her left knee as a result of the accepted injury to her right knee, which consequential condition requires total knee replacement surgery.

PROCEDURE BEFORE THE COMMISSION

10. As noted, the parties attended a conference/hearing on 6 August 2019. On that occasion, Mr J Gaitanis of counsel appeared for the applicant and Mr P Rickard of counsel appeared for the respondent.

11. I am satisfied that the parties to the dispute understand the nature of the applications and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

12. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) Application to Resolve a Dispute in proceedings number 2758/19 and attachments (the left knee Application);

    (b) Application to Resolve a Dispute and attachments in matter number 3110/19 (the carpal tunnel Application);

    (c) Reply and attached documents in proceedings number 2758/19 (the left knee Reply);

    (d) Reply and attachments in proceedings number 3110/19 (the carpal tunnel Reply); and

    (e) Applicant's Application to Admit Late Documents and attached documents in proceedings number 2758/19 (the left knee AALD).

Oral evidence

13. There was no oral evidence called the hearing.

SUBMISSIONS

Applicant's submissions in relation to carpal tunnel syndrome

14. Mr Gaitanis submitted the argument in relation to the need for carpel tunnel release surrounded whether the condition was sustained in the course of, or arising out of the applicant's employment with the respondent. He noted the report of the applicant's treating surgeon, Dr Chan, who said in his question and answer report to the respondent's insurer dated 20 November 2018, that he was "still of the view" the applicant's right carpal tunnel syndrome is not related to her original workplace injury.

15. Mr Gaitanis submitted that the comment by Dr Chan was unsupported by other medical evidence and the Commission would not place a great deal of weight upon it. He noted the applicant had provided three statements in the carpal tunnel proceedings, which noted she had undergone a right wrist fusion operation on 7 June 2012 before developing infection and post-operative complications. Mr Gaitanis noted the applicant's complaint in her statement at page 4 of the carpal tunnel Application that she suffers constant pain in her right hand and wrist.

16. Approval for further right wrist surgery was sought in March 2019. Originally, Dr Chan had written to the respondent's insurer in March of 2016 requesting surgery to the right wrist. At that time, his request was denied. For reasons which shall be further developed later, it is apparent that the surgery sought by Dr Chan and which was approved in part by the respondent's insurer in March of 2019 was different to that for which approval was sought but declined in March 2016.

17. Dr Chan requested in November 2018 that the applicant undergo right carpal tunnel release at the same time and under the same anaesthetic as her superficial radial nerve neurolysis. The respondent approved the neurolysis but declined liability for the right carpal tunnel release.

18. In his report of 20 November 2018, Dr Chan noted that in March 2016, he had sought approval for a right superficial radial nerve branch transposition and right posterior interosseous. Dr Chan made it clear that the request which he was making in November 2018 was different to that requested in 2016. Instead of a radial nerve branch transposition and right posterior interosseous, the proposed operation in November 2018 was superficial radial nerve neurolysis to address the applicant's superficial nerve compression. That operation was approved and the applicant underwent the surgery, however, the carpal tunnel release was refused.

19. Mr Gaitanis submitted, correctly in my view, that there is no issue the applicant suffers from carpal tunnel syndrome, the question is whether it is causally related to her employment.

20. Mr Gaitanis indicated that the Commission should reject the view of the respondent's Independent Medical Examiner (IME) Dr Scott, found at page 1 of the carpal tunnel Reply. He submitted that Dr Scott's frank concession that he had not examined the applicant and had made up his mind based upon certain documentation forwarded to him meant that little weight should be placed on his report.

21. Likewise, Mr Gaitanis submitted the report of Dr Walsh, IME for the respondent was predominantly concerned with the surgery which was ultimately approved and that he made very little comment in relation to the aetiology of the carpal tunnel symptoms.

22. In relation to Dr Chan's comment that he still believed the applicant's right carpal tunnel syndrome was not related to work, Mr Gaitanis submitted this was really nothing more than a bald-faced statement by the treating doctor for which no explanation was provided. He said the only probative evidence which went to the question of causation is therefore that of Dr Lai, IME for the applicant whose report dated 9 April 2019 is found at page 30 of the carpal tunnel Application.

23. In his report, Dr Lai indicates at page 37 the applicant's symptoms and condition developed following her surgery in 2012. Mr Gaitanis submitted that to the extent he provides any comment on the need for carpal tunnel release, Dr Walsh's opinion is supportive of Dr Lai in that he says there may well have been damage to the applicant's relevant nerves in the 2012 surgery (see the carpal tunnel Reply at page 23).

24. In summary, Mr Gaitanis submitted that there was no other rational explanation for the development of carpal tunnel symptoms other than nerve damage suffered in the 2012 surgery following the accepted right wrist injury.

Respondent's submission in relation to carpal tunnel syndrome.

25. Mr Rickard noted Dr Lai's assumption that the surgery which was sought to be carried out in 2019 was the same as that requested in 2016 is erroneous. I accept that submission, noting the reasons which I have provided in paragraph 18 above. It is apparent, on the face of Dr Chan's report of December 2018 that the surgery which was approved on the applicant's right wrist in late 2018/early 2019 was different to that proposed to be undertaken in March 2016.

26. Mr Rickard submitted the Commission would not likely discard Dr Chan's opinion in relation to the cause of the applicant's right carpal tunnel syndrome, given he has been treating her since 2011. Mr Rickard submitted it is highly unlikely Dr Chan would be unaware of carpal tunnel symptoms and pathology if they had been present since either the injury in 2011 or the surgery in 2012.

27. The respondent submitted that whether the surgery contemplated in 2016 was different to that eventually carried out in early 2019 was ultimately irrelevant to the matters to be decided in this case, as both types of surgery were to the radial nerve, whereas carpal tunnel syndrome affects the medial nerve.

28. Mr Rickard submitted that for Dr Lai to be correct, there would need to be some medial nerve injury around the time of either the applicant's initial injury in 2011 or following the surgery in 2012, and none is to be found in any contemporaneous evidence.

29. The Commission was then directed to the report of Dr Chan written to Dr Khaled on 12 November 2018, found at page 39 of the carpal tunnel Application. Whilst Mr Rickard acknowledged that Dr Chan accepted there was carpal tunnel syndrome as reported by Dr Korbel in an earlier report in 2015, he noted this was some three to four years following the initial injury and surgery, and it was in this context that Dr Chan's report to the insurer in December of 2018 makes sense in saying that he "still" believed the carpal tunnel syndrome was not related to the applicant's employment.

30. Mr Rickard noted that until approximately 2015 and 2016, all the treatment to the applicant's right wrist related to the radial nerve, and it was only after Dr Korbel found the thickening of the medial nerve in 2015/16 that there is a suggestion of the development of carpal tunnel syndrome. He submitted that when Dr Liu says the symptoms of carpal tunnel syndrome developed after the 2012 surgery, he was correct, however, they actually developed three to four years later. He submitted the Commission would be incorrect to ignore Dr Chan's opinion and in summary that the carpal tunnel syndrome is not related to the applicant's employment, and accordingly there should be an award for the respondent in relation to that claim.

The applicant's submissions in reply concerning carpal tunnel syndrome

31. Mr Gaitanis noted the applicant never improved from the 2012 surgery. He submitted that just because there was a delay in relation to medial nerve complaints does not diminish the causal link between work and that condition. He submitted Dr Liu's position is that symptoms developed post-surgery, and that is a common-sense approach to the development of them. He noted there is no IME support from the respondent for the proposition that the carpal tunnel syndrome is anything other than work-related and submitted there was an overreliance on Dr Chan by the respondent. He said the proposition that there was a delay in the onset of symptoms means the condition is not work-related does not dispel Dr Liu's opinion, which Mr Gaitanis submitted is compelling.

Applicant's submissions in relation to the left knee

32. Mr Gaitanis referred to the applicant's statement attached to the left knee AALD at page 1, and noted there is no evidence to contradict her claims that as a result of overuse and reliance on the left knee after her right knee injury and replacement, she has had significant left knee problems. He again noted there is no issue the left knee replacement surgery is necessary; however, the question is whether the need for it arises out of, or as a result of the applicant's employment with the respondent. He noted the applicant's problems with the left knee developed following her right knee replacement, but did not resile from the fact the applicant had had previous procedures to her left knee in both 1974 and 2002.

33. Nevertheless, Mr Gaitanis noted the applicant's treating surgeon Dr Gehr supported the causal link between the applicant's employment via the accepted right knee injury in his report dated 1 April 2019, as did Dr Qurashi, treating orthopaedic surgeon. Mr Gaitanis noted that Dr Gehr accounted for the previous procedures undertaken to the left knee in 2002 and 1974, and noted the left knee was asymptomatic before the 2012 right knee injury.

34. In relation to the respondent's IME Dr Bruce, Mr Gaitanis noted his history of the applicant's left knee giving way and accepted that there was possibly increased use of the left knee, in turn causing greater symptoms, but that overuse was not the cause of any pathology in the applicant's left knee which instead had been caused by advanced arthritis of a degenerative nature.

35. Mr Gaitanis submitted that this concession by Dr Bruce was helpful for the applicant because it referred to increased symptoms, notwithstanding Dr Bruce's view that those symptoms were only temporary. Mr Gaitanis noted that this assertion by Dr Bruce was contrary to the applicant's own history and also her use of walking aids over a number of years. In the circumstances, Mr Gaitanis submitted the Commission would not accept Dr Bruce's viewpoint that the applicant's symptoms were only temporary. He noted Dr Gehr dealt with Dr Bruce's opinion and indicated that the left knee had only become symptomatic after the right knee replacement in 2012.

The respondent's submissions in relation to the left knee

36. Mr Rickard relied on Dr Bruce's reports as the basis for the respondent's case. He noted that Dr Bruce recorded advanced and significant osteoarthritis which, Mr Rickard submitted, accounts for the need for surgery.

37. Mr Rickard quite appropriately conceded there was no dispute the applicant requires the operation of a total left knee replacement, however, he submitted the condition was pre-existing and the applicant would have needed it at or about the same time whether she suffered the fall and injury to the right knee or not.

38. Mr Rickard submitted that the real issue is whether the fall and/or the favouring of the left knee has been sufficient to alter the progression of the applicant's osteoarthritis. He submitted that in the circumstances the Commission would not be satisfied that it has. He stated there is no issue the applicant suffered a fall in the shower, however, there is nothing which informs the cause of the fall nor what has arisen from it. Mr Rickard submitted there must be a body of evidence sufficient to make a finding of consequential condition, and in this instance such evidence was not present.

DISCUSSION

Carpal tunnel syndrome

39. There is no issue the applicant requires right carpal tunnel release. The question in this case is whether her employment is a substantial contributing factor to the injury giving rise to the requirement for the surgery. In my view, for the following reasons, employment is not a substantial contributing factor to the right carpal tunnel syndrome.

40. The applicant bears the onus of proving that the carpal tunnel syndrome is work-related. In determining the cause of an injury, the Commission must apply a common-sense evaluation of the causal chain, as set out by Kirby P (as he then was) in *Kooragang Cement Pty Ltd v Bates* (1994) 10 NSWCCR 796 (*Kooragang*).

41. Liability for an employer to pay compensation pursuant to section 9 is limited by the requirement under section 9A that employment is a substantial contributing factor to the injury. Section 9A was introduced shortly after the High Court's decision in *Zickar v MGH Plastic Industries Pty Ltd* (*Zickar*) [1996] HCA 31; 187 CLR 310, and relevantly provides:

> "No compensation is payable under this Act in respect of an injury (other than a disease injury) unless the employment concerned was a substantial contributing factor to the injury.
>
> Note: In the case of a disease injury, the worker's employment must be the main contributing factor. See section 4."

42. Subsection (2) of section 9A provides examples of matters to be taken into account in determining whether employment was a substantial contributing factor. The list, which is not exhaustive, has six examples:

> (a) the time and place of the injury,
>
> (b) the nature of the work performed and the particular tasks of that work,
>
> (c) the duration of the employment,
>
> (d) the probability that the injury or a similar injury would have happened anyway, at about the same time or at the same stage of the worker's life, if he or she had not been at work or had not worked in that employment,
>
> (e) the worker's state of health before the injury and the existence of any hereditary risks,
>
> (f) the worker's lifestyle and his or her activities outside the workplace.

43. Whether employment is a substantial contributing factor to an injury is a question of fact and is a matter of impression and degree (*Dayton v Coles Supermarkets Pty Ltd* [2001] NSWCA 153 at [29] (*Dayton*); *McMahon v Lagana* [2004] NSWCA 164 (*McMahon*) at [32]) to be decided after a consideration of all the evidence. See also *Workcover Authority of NSW v Walsh* [2004] NSWCA 186.

44. It is important to recognise in section 9A that the employment must be a substantial contributing factor to the injury, not to the incapacity, need for treatment or loss. In *Rootsey v Tiger Nominees Pty Ltd* [2002] NSWCC 48; (2002) 23 NSWCCR 725 Neilson CCJ stated "employment must be a substantial contributing factor to the event causing the injury; that is, to the receipt of the injury, rather than to be a substantial contributing factor to the ongoing incapacity" (at [19]).

45. It is also important to note that the employment must be "a" substantial contributing factor to the injury, not "the" substantial contributing factor. The Court held in *Mercer v ANZ Banking Corporation* [2000] NSWCA 138 that there may be more than one substantial contributing factor to a single injury, of which employment only need be one (at [16]). The Court also excluded the relevance of a predisposition or susceptibility to injury, Mason P saying:

> "Section 9A does not require that the employment must be 'the' substantial contributing cause, nor does it attempt to exclude predisposition or susceptibility to a particular condition (cf *University of Tasmania v Cane* (1994) 4 Tas R 156)." (at [27])

46. When one examines the medical evidence in this matter, there is little question the applicant continued to have problems with her right wrist following the surgery in 2012, which in turn required revision. Upon reviewing the contemporaneous evidence, however, it is apparent that Mr Rickard's submission as to the nature of the applicant's problems which gave rise to the need for surgery in both 2016 and in 2019 when it was ultimately carried out are correct. The applicant required surgery for a work-related injury to her radial nerve. She developed carpal tunnel symptoms in her medial nerve several years after her work injury.

47. Mr Gaitanis's submission to the effect that the mere passing of time does not prevent the carpal tunnel syndrome being work related is, with respect, accurate as far as it takes the relevant inquiry. It does not, however, establish liability in the respondent for the applicant's condition. The applicant must demonstrate the causal connection on the balance of probabilities. In my view, she has not done so.

48. Dr Chan has been the applicant's treating surgeon since approximately 2011. He specifically excludes the applicant's employment as being causally related to the onset of carpal tunnel syndrome. Rather, he requested permission from the respondent to carry out the carpal tunnel release at the same time as the radial nerve surgery in order to avoid the applicant having to undergo two rounds of anaesthetic.

49. As a longstanding treating doctor, I place considerable weight on Dr Chan's opinion. This is particularly the case where he specifically addresses the question of causation in answering the questions of the respondent's insurer. It is apparent Dr Chan, as familiar as he is with the applicant's condition, specifically considers the applicant's employment as a contributing factor to the need for carpal tunnel release, and rules it out.

50. I have accepted Mr Gaitanis' submission that Dr Scott's opinion is of little weight, containing as it does the admission he had not examined the applicant, but rather drawn his conclusions based on material provided to him. I also accept Mr Gaitanis' submission that Dr Walsh's report is of limited utility in determining the relevant issue in this matter, as it predominantly deals with the necessity of the surgery which was ultimately undertaken in 2019.

51. I have taken into account Dr Lai's opinion that the applicant's medial nerve injury developed after her surgery in 2012, however, in my view Dr Lai does not provide a basis for his conclusion that the injury arose from damage caused in that surgery, or indeed in the original injury in 2011. Rather, there is no contemporaneous evidence of injury to the medial nerve until years after the 2012 surgery, and certainly none in the immediate aftermath when infection developed and surgical revision was required. In my view, the doctor best placed to provide a persuasive view on the aetiology of the carpal tunnel syndrome is Dr Chan, who specifically rules out employment as a contributing factor.

52. Accordingly, there will be an award for the respondent on the claim for right carpal tunnel release.

Consequential condition to left knee

53. It is important at the outset to establish the relevant test for establishing the presence of a consequential condition. This is particularly so where the respondent seeks to rely on an absence of established pathology in the left knee as a basis for a finding that no consequential injury has taken place.

54. In *Kumar v Royal Comfort Bedding Pty Ltd* [2012] NSWWCCPD 8 (*Kumar*), Deputy President Roche dealt with the issue of whether the injured worker's shoulder condition resulted from mobilising whilst recuperating from accepted back surgery. At paragraph 35 and following, Roche DP stated:

> "35. By asking if Mr Kumar has suffered a s 4 injury to his right shoulder, the Arbitrator erred in his approach and asked the wrong question. This error affected his approach to the medical evidence and his conclusion. Mr Kumar's claim was always, as the respondent has conceded on appeal, that the right shoulder condition, and the need for surgery, resulted from the accepted back injury. It was not necessary for him to prove that he suffered a s 4 injury to his right shoulder.
>
> 36. The Commission has considered claims of this kind in several decisions (*Cadbury Schweppes Pty Ltd v Davis* [2011] NSWWCCPD 4 (Davis); *Vivaldo*; *Moon v Conmah Pty Ltd* [2009] NSWWCCPD 134 [Moon]; *Australian Traineeship System v Turner* [2012] NSWWCCPD 4 (*Turner*)) and has consistently applied the principles in *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452 (*Kooragang*)."

55. At paragraph 55 of the decision in *Kumar*, the Deputy President noted:

> "It is not necessary for Mr Kumar to establish that he has significant pathology in his shoulder, only that the proposed surgery is reasonably necessary as a result of the injury on 19 March 2009. Dr Wallace's opinion may well be relevant to the ultimate question of whether the shoulder surgery is reasonably necessary, but it does not determine the question of whether the right shoulder condition has resulted from the back injury."

56. It is apparent from the line of authority commencing with *Kumar* that the applicant in this matter does not need to establish the presence of right knee pathological change consistent with the definition of injury contained within section 4 of the 1987 Act, in order to succeed on her claim. In *Moon*, Deputy President Roche set out what is required to establish consequential condition at [44]-[46]:

> "44. The evidence in support of this allegation is brief but clear. It is obvious that Mr Moon has experienced significant restrictions in the use of his right arm and shoulder for several years. It is not disputed that that restriction has resulted from his employment with Conmah. As a result, he has used his left arm and shoulder to compensate for his right shoulder condition. Therefore, Mr Moon is claiming compensation for a consequential loss. That is, a loss or impairment that he alleges has resulted from his previous compensable injury to his right shoulder (see *Roads & Traffic Authority (NSW) v Malcolm* (1996) 13 NSWCCR 272).

45. It is therefore not necessary for Mr Moon to establish that he suffered an 'injury' to his left shoulder within the meaning of that term in section 4 of the 1987 Act. All he has to establish is that the symptoms and restrictions in his left shoulder have resulted from his right shoulder injury. Therefore, to the extent that the Arbitrator and Dr Huntsdale approached the matter on the basis that Mr Moon had to establish that he sustained an 'injury' to his left shoulder in the course of his employment with Conmah they asked the wrong question.

46. The test of causation in a claim for lump sum compensation is the same as it is in a claim for weekly compensation, namely, has the loss 'resulted from' the relevant work injury (see *Sidiropoulos v Able Placements Pty Limited* [1998] NSWCC 7; (1998) 16 NSWCCR 123; *Rail Services Australia v Dimovski & Anor* [2004] NSWCA 267; (2004) 1 DDCR 648)."

57. In this matter, I am satisfied on the balance of probabilities that the requirement for the left knee replacement surgery arises from a consequential condition in that body part, caused by the accepted right knee injury. I accept the applicant's uncontested evidence that her left knee symptoms developed following the right knee injury, and that despite problems many years earlier, at the time of the right knee injury and for a period thereafter, her left knee was asymptomatic and had been for many years. I also accept the applicant's evidence that she placed increased stress and strain on her left knee and over compensated in her gait, as a result of the right knee injury.

58. In my view, the preponderance of the medical evidence supports the link between the right knee injury and the development of the left knee condition. I accept the view of Dr Gehr and Dr Qureshi that there is a causal link between the left knee condition and the right knee injury, supported as it is by the respondent's own IME, who found the left knee giving way was consistent with such a link. I note Dr Qureshi confirms the asymptomatic nature of the left knee before the overuse which followed the right knee injury, and in my view, that is supported by Dr Bruce's appropriate admission concerning the aggravation of asymptomatic left knee arthritis following the right knee injury.

59. Where the doctors disagree, and where I find in favour of the treating surgeons, is the extent of the aggravation to the arthritis and whether the requirement for surgery would have been present even if the injury to the right knee had not taken place. Dr Bruce opines the applicant's aggravation caused by over use and giving way was temporary, and she would have come to require the knee replacement surgery at around this time in any event. With respect, I reject that view. There is no evidence whatsoever which indicates the applicant's left knee was symptomatic before the right knee injury.

60. All the lay evidence supports the applicant's overuse as being the ongoing cause of her left knee symptoms, and that evidence is supported by the preponderance of the medical evidence. Even Dr Bruce supports the view of there being a work-related aggravation, but says it was only temporary. He does not, in my view, provide adequate reasons for stating why the aggravation was temporary, and I reject his view on that important factor, as it is merely a statement of opinion which is unsupported by the objective facts of the case. Rather, I prefer the views of the applicant's treating surgeons, who are of the view the reasonably necessary left knee replacement is consequential upon a condition developed as a result of the accepted right knee injury.

61. Accordingly, there will be an order that the respondent pay the costs of and incidental to the left knee replacement surgery.

SUMMARY

62. In light of the above reasons, the Commission will make the following findings and Orders:

(a) The applicant suffered a consequential condition to her left knee as a result of an accepted right knee injury in the course of her employment with the respondent on 8 July 2011;

(b) The respondent is to pay for the costs of and associated with the total left knee replacement surgery, which is reasonably necessary; and

(c) Award for the respondent on the claim for the cost of right carpal tunnel release surgery.