

# WORKERS COMPENSATION COMMISSION

## CERTIFICATE OF DETERMINATION

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

**Matter Number:** 2311/20  
**Applicant:** Thi Thu Thuy Truong  
**Respondent:** P & M Quality Smallgoods Pty Limited  
**Date of Determination:** 8 July 2020  
**Citation:** [2020] NSWCC 230

The Commission determines:

1. The applicant has leave to amend the deemed date of injury to the left knee in the Application to Resolve a Dispute to 10 October 2019.
2. The claim for weekly benefits compensation for consequential conditions of the right knee and lumbar spine is discontinued.
3. I dispense with the requirement to file an Election to Discontinue.
4. The applicant sustained injury to the left knee arising out of or in the course of her employment with the respondent to which her employment was the main contributing factor (deemed date of injury 10 October 2019).
5. The matter is remitted to the Registrar for referral to an Approved Medical Specialist pursuant to section 321 of the *Workplace Injury Management and Workers Compensation Act 1998* for assessment of whole person impairment, if any, due to disease injury (deemed date 10 October 2019) resulting from the applicant's employment with the respondent.
6. Body parts to be assessed:
  - (a) Left lower extremity (left knee);
  - (b) Skin (TEMSKI scarring).
7. The documents to be referred to the Approved Medical Specialist are:
  - (a) Documents attached to the Application to Resolve a Dispute;
  - (b) Documents attached to the Reply;
  - (c) Documents attached to an Application to Admit Late Documents lodged by the applicant on 12 June 2020.
8. The referral is to be placed in the Medical Assessments Pending list.
9. The respondent to pay the applicant's reasonably necessary medical expenses resulting from the injury.

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

Jill Toohey  
**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 JILL TOOHEY, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

*S Naiker*

Sarojini Naiker  
Senior Dispute Services Officer  
**As delegate of the Registrar**



## STATEMENT OF REASONS

### BACKGROUND

1. The applicant, Thi Thu Thuy Truong, was employed by P & M Quality Smallgoods Pty Limited (the respondent) as a process worker from 2007 to September 2017. She claims she sustained injury to her left knee as a result of the nature and conditions of her employment.
2. By a notice issued under the former s 74 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) on 19 August 2016, the respondent denied liability to compensate Ms Truong for injury to her left knee (deemed date 11 January 2016).
3. On 10 September 2019, the respondent issued a notice under s 287A of the 1998 Act maintaining its denial of liability in respect of injury to Ms Truong's left knee, and denying liability to compensate her for consequential conditions of her right knee and lumbar spine.
4. On 10 October 2019, Ms Truong claimed compensation for permanent impairment of her left knee. By letter dated 21 February 2020, she claimed compensation for medical expenses.
5. By a further s 78 notice issued on 6 May 2020, the respondent maintained its decision.
6. At the arbitration hearing on 23 June 2020, Ms Truong discontinued her claim for compensation for consequential conditions of her right knee and lumbar spine, leaving the claims for permanent impairment of her left knee and medical expenses in contention.
7. Leave was granted to Ms Truong at the hearing to amend the deemed date of injury to her left knee to 10 October 2019. The date of injury for the purposes of the claim for medical expenses remains 11 January 2016 as pleaded.

### ISSUES FOR DETERMINATION

8. The parties agree that the following issues remain in dispute:
  - (a) Whether Ms Truong sustained injury to her left knee within the meaning of s 4(b)(i) or s 4(b)(ii) of the *Workers Compensation Act 1987* (the 1987 Act);
  - (b) Whether Ms Truong is entitled to reasonably necessary medical expenses.

### PROCEDURE BEFORE THE COMMISSION

9. The parties attended a hearing on 23 June 2020. Mr Stephen Hickey of counsel appeared for Ms Truong. Mr Josh Beran of counsel appeared for the respondent. I am satisfied that the parties to the dispute understand the nature of the application 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

10. The following documents were in evidence before the Commission and taken into account in making this determination:
  - (a) Documents attached to the Application to Resolve a Dispute;

- (b) Documents attached to the Reply;
- (c) Documents attached to an Application to Admit Late Documents lodged by the applicant on 12 June 2020.

### **Oral evidence**

- 11. There was no oral evidence.

### **FINDINGS AND REASONS**

- 12. There is no dispute that Ms Truong has a degenerative condition in her left knee. She maintains that it was caused by her employment within the meaning of s 4(b) (i) of the 1987 Act; alternatively that her employment resulted in the aggravation, acceleration or exacerbation, or deterioration, of a disease within the meaning of s 4(b)(ii) of the 1987 Act.

### **Ms Truong's evidence**

- 13. Ms Truong's evidence is set out in a written statement dated 17 January 2020 taken through a Vietnamese interpreter. The following is a summary as relevant to the present claim.
- 14. Ms Truong is 53 years old. She describes her duties as a process worker and machine operator for the respondent from 2007 to 2017 as follows:

“My job involved setting up a machine and standing at a conveyor line and packing meat and other meat products. I had to stand all day. I had to bend and twist whilst lifting and packing. The twisting motion was at my back and knees.

I had to work very quickly to match the speed of the conveyor belt.

I worked full time. There was a lot of overtime until about 2014. I worked 6 days a week, from 6am to 5pm. I had two, half an hour breaks and 1 break of 10 minutes, but apart from that I was standing continuously.

After 2014, I no longer worked Saturdays, but I still worked 1 hour of overtime, 5 days a week.”

- 15. Ms Truong says she had no problems with her knees before starting employment with the respondent. In the middle of 2013 she started to notice some left knee pain by the end of a day's work. She saw her family doctor, Dr Duy Long Tuong, in June 2013. He referred her to Dr Tram Anh Bui, rehabilitation specialist, who prescribed painkillers. She started taking Glucosamine, which made the pain better, but she was never completely pain-free.
- 16. Ms Truong says she continued performing the same duties and her left knee gradually became more painful, even with Glucosamine and Panadol Osteo. By the middle of 2016 the pain was very severe and she reported it to her employer. After reporting it, she continued doing the same job but she did not have to lift very heavy meats. She still had to stand, bend and twist all day. She continued to work normal hours.
- 17. In July 2016, her employer sent her to a physiotherapist, and to Dr Mandlenkosi Sibanda who sent her for an ultrasound and x-ray of her left knee. (It appears from the radiological report it was in fact Dr Tuong who referred her for the ultrasound and x-ray but nothing turns on this.) On 4 July 2016 she had an MRI. Dr Sibanda recommended she keep taking Glucosamine and painkillers. She did not have confidence in him as he was the company doctor and he kept telling her the problem was old age. Dr Sibanda referred her to Dr Minitier.

18. Ms Truong sought treatment from general practitioner, Dr Albert Nguyen, who referred her to Dr Quang Dao, orthopaedic surgeon. Dr Dao referred her for an injection to her left knee which she had on 19 October 2016. It did not give her long-term relief. She continued to work with a lot of pain and her left knee was swollen all the time.
19. Her claim was denied after she saw Dr Minitier. She was in so much pain. On days when she could not walk she took sick leave and, when that ran out, she took annual leave. She resigned in September 2017 when all her leave ran out. She was in too much pain, she could not stand or walk even for 10 minutes without severe pain, and her work involved constant standing and putting weight on her knee.
20. On 30 April 2018, Dr Dao performed a left knee replacement. Medicare met the cost of surgery and she paid for his consultations. She has not worked since. She has looked for sitting down factory work but she has never seen such a position advertised, and she does not know if she could do it in any event as she would have difficulty sitting for long periods because she has back pain, and she would have difficulty bending or twisting while sitting.

### **Dr Sibanda**

21. Dr Sibanda provided a Workcover certificate on 12 July 2016. The copy provided to the Commission is indistinct and Mr Beran read from his copy where necessary. Dr Sibanda diagnosed “Knee pain, Meniscus degen/aggravation of degenerative condition” with respect to the date of injury of 11 January 2016 as stated by Ms Truong.
22. Where the form asked whether “the disease is consistent with patient description of cause”, Dr Sibanda indicated “Uncertain”. As to how the disease was related to Ms Truong’s work, he recorded “Gradual onset of left knee pain since January, no incident. Was working as a machine operator – constant standing, occasional twisting”. He certified Ms Truong fit for suitable duties with a lifting restriction of 5 kilograms. With reference to pushing and pulling, he recommended “Min, with care”. With reference to bending/twisting/squatting, he wrote “Avoid”.

### **Radiological scans**

23. The ultrasound and x-ray of Ms Truong’s left knee on 4 May 2016 showed osteoarthritic change of the left knee. The MRI on 4 July 2016 showed moderate to severe degeneration in the medial compartment with a degenerate medial meniscus.

### **Dr Dao and Dr Olschewski**

24. Dr Dao, who performed the left knee surgery, provided reports to Dr Nguyen which record that Ms Truong had advanced osteoarthritis of the medial compartment on MRI. On 19 October 2016, Dr Dao reported a history of deteriorating left knee pain for the past 12 months “which is aggravated when she stands up from a sitting position”. He did not comment on any relationship to her employment.
25. Dr Eli Olschewski, orthopaedic surgeon, saw Ms Truong on 9 February 2018. He reported to Dr Nguyen that she came to him in an effort to expedite her surgical management. She had been having increasing left knee pain for a number of years and was now unable to work. He noted the scans from 2016. He agreed with Dr Dao’s recommendation for surgery. He did not comment on any relationship to Ms Truong’s employment.

## Dr Nguyen

26. Dr Nguyen provided a report to Ms Truong's solicitors on 13 August 2019. He said she complained of "recurrent / severe knees [sic] pain and difficulties with performing her work and household duties." He diagnosed severe knee joints [sic] degeneration. As to whether the left knee symptoms arose as a result of the nature and conditions of Ms Truong's employment, he said:

"I was advised that Mrs Truong worked for the company for many years. She stated it was expected of her to 'stand all day, bend and twist to reach, carry, lift and pack'. She reported that she was required to work very quickly to match the speed of the meat and food which were conveyed along the line by a conveyor belt. Mrs Truong complained of recurrent /severe pain with prolonged standing and walking. This was aggravated further by carrying heavy weight during the above manoeuvres. I believe [her] symptoms and signs are genuine [and] consistent with her description of the mechanism of injury, her allocated duties, and the positive examination finding. I believe her diagnosis is work-related and work is thus a substantial contributing factor."

## Dr Wong

27. Dr Cyril Wong, general surgery consultant, saw Ms Truong for assessment on 1 July 2019. He recorded that, at the time of her work injury on 11 January 2016, she was working as a meat packer. Her duties involved "packing meat and mixed food which required her to inter alia, stand all day, bend and twist to reach, carry, lift and pack. She was required to work very quickly to match the speed of the food products moving along the conveyor belt."
28. Dr Wong noted that Ms Truong had no history of knee symptoms or condition when she joined the company in 2007. She started experiencing mild left knee pain in mid-2015. It gradually got worse. On 11 April 2016, she had severe left knee pain at work and notified her employer who sent her to a physiotherapist who treated her with acupuncture for about three months. The treatment was not successful. Subsequently, she consulted Dr Sibanda who referred her for an MRI which showed "moderate to severe degeneration in the medial compartment with a degenerate medial meniscus, and areas of partial thickness and full thickness chondral loss predominantly in the medial compartment with subchondral bony changes in the femur."
29. Dr Wong recorded that Dr Dao performed a knee replacement in April 2018, and he noted a severely pigmented scar following the surgery.
30. Dr Wong diagnosed, relevantly, left knee severe degenerative changes with osteoarthritis and chondral loss predominantly in the medial compartment, and scarring. In response to a question whether the injury was the result of specific incident or nature and conditions of employment, Dr Wong said:

"The injuries described are the result of the nature and conditions of her employment. The relevant period of employment was from 2007 to 2017. The work duties which would have caused the injuries sustained by your client are as described in the "BACKGROUND" [sic] section of this report."

31. Dr Wong was asked whether, if it was a degenerative disease condition, it was caused or aggravated, accelerated, exacerbated or deteriorated by Ms Wong's employment, and employment was the main contributing factor. He stated:

"It was a degenerative disease condition caused and aggravated by the nature and conditions of her employment as a meat packer. Her employment is the main contributing factor to the degenerative or disease condition."

32. Dr Wong assessed whole person impairment of Ms Truong's left lower extremity as 20 per cent, and TEMKSI scarring as 2 per cent.

### **Associate Professor Minter**

33. Associate Professor Minter saw Ms Truong for assessment on 22 July 2016. He took a history that the left knee pain started without an obvious precipitating factor in January 2016 and accelerated to the point where she could no longer work. He recorded that she had been on light duties, two hours standing and two hours sitting, for the previous two weeks or so. Before that, she was maintaining her normal functional activities but with difficulty, and she said her knee was becoming more and more troublesome with time. He noted that treatment to date had been largely ineffective.

34. Associate Professor Minter noted the MRI showed advanced medial compartment osteoarthritis. He said there was no doubt Ms Truong had a serious underlying medical problem. He said advanced medial compartment osteoarthritis is "very common in women of her age" and she required treatment by way of surgery. He stated:

"I do not see this as related to the workplace. There are significant factors leading to the supposition that this is a constitutional matter."

35. Asked whether Ms Truong's employment was a substantial contributing factor to the gradual onset of pain since January 2016, Associate Professor Minter said:

"I would agree there has been no frank incident. I do not believe her employment with [the respondent] ... is a substantial contributing factor to the current presentation."

36. As to whether Ms Truong's injury was related to an "underlying, pre-existing/degenerative condition which is unrelated to her employment", Associate Professor Minter said "The matter relates to an underlying, pre-existing degenerative disease". Asked whether it was highly probable that the disease condition was present prior to the alleged injury, he said it was. Her employment was not "a main contributing factor", and her condition would have occurred had she been at work or otherwise.

### **The applicant's submissions**

37. Mr Hickey makes the following submissions.
38. Ms Truong's statement, and the history she gave to Dr Wong on whom she principally relies, show that she was employed by the respondent from 2007 until September 2017. The pain started around January 2016 and, by the time she saw Associate Professor Minter in July 2016, she had been on lighter duties for about two weeks.
39. Mr Hickey submits that Ms Truong has given a clear description of her duties. She had to stand all day, and had to bend and twist while lifting and packing, working at speed to keep up with the conveyor belt. She worked full-time, six days a week, standing continuously. She had no problems with her knee before starting work for the respondent. The MRI in July 2016 showed significant degeneration in the medial compartment in her left knee.
40. Mr Hickey submits that I would be satisfied on the evidence of Ms Truong's employment duties and the history of her left knee complaint.

41. With respect to the medical evidence, Mr Hickey submits that Dr Wong took a history of Ms Truong's duties, and had her medical history including the radiological scans. In Dr Wong's opinion, the condition in her left knee was due to the nature and conditions of her employment as described in the "Background" part of his report. He found her degenerative condition was caused and aggravated by her duties, and that her employment was the main contributing factor. Dr Wong supports a finding of injury within the meaning of s 4(b)(i) and s 4(b)(ii), and he assessed the degree of whole person impairment as 22 per cent.
42. Mr Hickey submits that Associate Professor Minter said it was "highly probable" that the degenerative condition in Ms Truong's left knee was present prior to the alleged injury, and her employment was not the main contributing factor. Mr Hickey says it is probably true that the condition was already present because the MRI in 2016 showed significant degenerative change. However, Associate Professor Minter does not address the question of whether Ms Truong's employment led to the aggravation, acceleration, exacerbation or deterioration of that condition within the meaning of section 4(b)(ii).
43. Mr Hickey submits that I would accept Dr Wong's opinion and would be satisfied that Ms Truong sustained injury within the meaning of s 4(b)(i) and s 4(b)(ii), the deemed date of injury being 10 October 2019 when Ms Truong made her claim for compensation for permanent impairment. I would also be satisfied that she is entitled to a general order under s 60 for reasonably incurred medical expenses.

#### **The respondent's submissions**

44. Mr Beran submits that Ms Truong bears the onus of proving, on the balance of probabilities, that she sustained the injury she claims; the respondent is not required to prove anything. The general flavour of the evidence might appear to support a disease of gradual process, or the aggravation or acceleration of a disease, but considering the totality of the evidence, Ms Truong does not meet that onus.
45. In her statement, Ms Truong says she had to stand all day, and she describes her duties in broad terms but she offers no detailed understanding of her duties. We do not know from her evidence how often she had to "bend and twist while lifting and packing". It is not possible to determine, on her evidence, what the nature and conditions of her employment were.
46. Mr Beran submits that the certificate of capacity provided by Dr Sibanda shows he was "uncertain" whether Ms Truong's disease was consistent with her description of its cause. Moreover, the certificate refers to standing and "occasional" twisting.
47. Mr Beran further submits that Dr Nguyen does not assist Ms Truong because he says she complained of recurrent/severe knee pain and difficulties "with performing her work and household duties". Mr Beran submits that nothing in his report helps as far as the actual nature and conditions of her employment and its relationship to her severe, deteriorating condition. Dr Nguyen makes the bald statement that her diagnosis was work-related and that her employment was a substantial contributing factor, without any reasoning as to cause and effect. The reference to household duties is significant because the test is whether her employment was the main contributing factor to injury within the meaning of ss 4(b)(i) and (ii).
48. Dr Dao's reports are mainly about treatment. The respondent does not take issue with the need for the surgery, only with its relationship to Ms Truong's employment. Dr Dao in his report of 19 October 2016 referred to left knee pain that is "aggravated when she stands up from a sitting position". Mr Beran submits that Ms Truong has not referred to this in her statement and it makes clear that her employment was not the only factor.



49. Mr Beran submits that what is left are two competing independent medical experts: Dr Wong, a consultant in general surgery, and Associate Professor Minter, a qualified orthopaedic specialist. Mr Beran submits that I would place more weight on Associate Professor Minter's opinion. Dr Wong adds nothing to Ms Truong's evidence as to her actual duties. He refers in his conclusion to the nature and conditions of her employment "as described on the Background section" of his report but no reasoning process is disclosed as to how her significant condition was caused or worsened by her employment. Mr Beran submits I would require more than a bald statement to feel the actual sense of persuasion required to find for Ms Truong. In contrast, Associate Professor Minter, an orthopaedic specialist, found her left knee condition was very common in women of her age.
50. Mr Beran submits that a common sense approach as described in *Kooragang Cement Pty Ltd v Bates*<sup>1</sup> (*Kooragang*) is not a matter of general common sense, but in a case like this relies on medical opinion. Ms Truong's actual duties are crucial to determining causation; one would expect evidence such as the frequency and duration of the duties said to have caused the injury. A bare *ipse dixit* such as provided by Dr Wong is insufficient, especially given evidence of another aggravating factor.

### Submissions in reply

51. In reply, Mr Hockey submits that Dr Wong does describe sufficiently Ms Truong's duties. He sets out what she did all day including that she had to work very quickly to match the speed of the food products moving along the conveyor belt. Dr Nguyen also describes her duties in detail and considered her injury consistent with the mechanism of injury she described.
52. Finally, Mr Hickey submits, Dr Sibanda certified Ms Truong fit for suitable duties with a lifting restriction of 5 kilograms. With reference to pushing and pulling, he recommended "Min, with care". With reference to "bending/twisting/squatting" he indicated "Avoid". It is reasonable to infer that he considered those activities causally related to her condition.

### Consideration

53. Section 4 of the 1987 Act relevantly provides:

"injury":

(a) means personal injury arising out of or in the course of employment,

(b) includes a

"disease injury", which means-

- (i) a disease that is contracted by a worker in the course of employment but only if the employment was the main contributing factor to contracting the disease, and
- (ii) the aggravation, acceleration, exacerbation or deterioration in the course of employment of any disease, but only if the employment was the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of the disease"

54. Ms Truong bears the onus of proving, on the balance of probabilities, that she has suffered injury by way of a disease contracted in the course of her employment to which her employment is the main contributing factor, or that her employment is the main contributing factor to the aggravation, exacerbation, acceleration or deterioration of a pre-existing disease. I must feel an actual persuasion or affirmative satisfaction: *Department of Education and Training v Ireland*<sup>2</sup> and *Nguyen v Cosmopolitan Home*<sup>3</sup>.

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<sup>1</sup> *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452; 10 NSWCCR 796.

<sup>2</sup> *Department of Education and Training v Ireland* [2008] NSWCCPD 134

<sup>3</sup> *Nguyen v Cosmopolitan Homes* [2008] NSWCA 246

55. The issue of causation must be determined on the facts in each case and requires a common sense evaluation of the causal chain: *Kooragang*. However, a “common sense” approach cannot be applied at large. In *Kirunda v State of New South Wales (No 4)*<sup>4</sup> Snell DP said at [136]:

“In *Kooragang Cement Pty Ltd v Bates Kirby* P said that causation “is a question of fact to be determined on the basis of the evidence, including, where applicable, expert opinions”. A finder of fact, dealing with issues of causation, is entitled to “have some recourse” to “the sequence of events and common sense”. However, where an “issue lies outside the realm of common knowledge and experience” it “falls to be determined by reference to expert medical evidence”. In *Lithgow City Council v Jackson* the plurality said, of a finding on causation:

“That proposition is not self-evident. To establish it would call for more than the application of ‘common sense’ or the court’s experience of ordinary life. The proposition turns on an inference from the nature of the respondent’s injuries to their probable cause. That inference could only be drawn in the light of expert medical evidence.” (footnotes omitted)

56. There is no dispute that Ms Truong has a degenerative osteoarthritic condition in her left knee. So much was clear on the MRI in July 2016, by which time it was “moderate to severe”. Merely because her condition developed during the time she was employed by the respondent does not answer whether it was causally related. However, for the reasons that follow I am satisfied she has discharged the onus on her.
57. I accept that the description Ms Truong has given in her statement and to the doctors does not include details of the frequency of individual duties. However, I think it is reasonably clear from her statement that she was on her feet all day, working at speed, packing meat and other meat products, moving items along the conveyor belt, bending and twisting at times while doing so. She did nothing else. Once on lighter duties, from sometime around July 2016, she no longer had to lift “very heavy meats” while performing her duties.
58. It is reasonable to infer from Dr Sibanda’s Workcover certificate that he understood her duties to include lifting objects of some weight, pushing and pulling, and “bending/twisting/squatting” because he indicated restrictions on those activities. He may have been uncertain whether the disease was consistent with Ms Truong’s description of the cause of injury but he nevertheless diagnosed an aggravation of a degenerative condition. He noted “constant” standing but “occasional” twisting. It is not clear what he understood by “occasional” twisting but it is reasonable to infer he considered it sufficient to at least worth including.
59. The history taken by Dr Nguyen and Dr Wong was very similar, and consistent with Ms Truong’s evidence. I think it reasonable to infer from their reports that they had a fair understanding of what her duties comprised, sufficient to offer an opinion as to the causal relationship to her left knee condition.
60. Dr Nguyen had treated Ms Truong over many years and it is reasonable to conclude he had a fair understanding of what her work entailed; his report shows that he did. He did not state explicitly the mechanism of injury he referred to in his report but I do not think his opinion can be said to be a bare *ipse dixit*.

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<sup>4</sup> [2018] NSWCCPD 45

61. Dr Wong also took a history consistent with Ms Truong's evidence about her duties. He is a qualified specialist though not an orthopaedic surgeon like Associate Professor Minter. I do not understand Mr Beran to say Dr Wong lacked expertise to provide an opinion, rather that Associate Professor Minter's specialist expertise is superior and his opinion to be preferred.
62. Dr Wong took a detailed medical history and clinical examination. He noted that Ms Truong had severe degenerative change in the left knee. It is true that he stated only that her work duties as described to him would have "caused and aggravated" her condition but, read in the context of his report overall, I do not think his opinion can be said to be a bare *ipse dixit*, without reasoning. I do not accept that Dr Wong gave no explanation for his opinion: he explained her condition by reference to her work duties as she described them.
63. Associate Professor Minter does not describe in his report what Ms Truong's duties were, only that she had been on light duties for the previous two weeks or so, before which she had been doing her "normal functional duties" with difficulty. He concluded simply that her condition was "very common" in women of her age and would have occurred in any event regardless of her employment. I agree with Mr Hickey's submission that Associate Professor Minter does not answer the question whether her duties caused or aggravated her degenerative condition. That he thought it highly probable that the disease condition was present prior to the alleged injury does not answer whether it was made worse by her employment. The fact that he is an orthopaedic surgeon does not of itself lead me to prefer his opinion.
64. I accept that, whatever deficiencies there might be in Associate Professor Minter's report, it remains for Ms Truong to prove her case on the balance of probabilities. Considering the evidence of her treating doctor, and Dr Wong, together with Dr Sibanda's report, I am satisfied she has discharged that onus. I am satisfied, on the balance of probabilities, that her duties while employed by the respondent aggravated, accelerated, exacerbated or led to the deterioration of, her degenerative condition.
65. To satisfy s 4(b)(ii), Ms Truong's employment with the respondent must be the main contributing factor to the aggravation, acceleration, exacerbation or deterioration of her pre-existing condition. I am satisfied on the evidence that it was. Mr Beran submits that Dr Nguyen does not assist her because he says she complained of recurrent/severe knee pain and difficulties "with performing her work and household duties". However, the fact that she experienced pain on performing household work, and Dr Dao recorded that the pain was aggravated on standing from sitting, does not detract from her full-time work over many years performing duties that her doctors say aggravated her degenerative condition. I am not satisfied those other factors displace her employment duties as the main contributing factor to the injury within the meaning of s 4(b)(ii).
66. The respondent does not take issue with the medical expenses for which accounts and receipts have been provided. There will be a general order for payment of reasonably incurred s 60 medical expenses.

## CONCLUSION

67. For these reasons, I am satisfied, on the balance of probabilities, that Ms Truong sustained injury to her left knee arising out of or in the course of her employment with the respondent to which her employment was the main contributing factor, the deemed date of injury being 10 October 2019.
68. The matter is remitted to the Registrar for referral to an Approved Medical Specialist pursuant to s 321 of the 1998 Act for assessment of whole person impairment, if any, due to disease injury (deemed date 10 October 2019) resulting from the applicant's employment with the respondent.

69. Body parts to be assessed:
  - (a) Left lower extremity (left knee);
  - (b) Skin (TEMSKI scarring).
  
70. The documents to be referred to the Approved Medical Specialist are:
  - (a) Documents attached to the Application to Resolve a Dispute;
  - (b) Documents attached to the Reply;
  - (c) Documents attached to an Application to Admit Late Documents lodged by the applicant on 12 June 2020.
  
71. The referral is to be placed on the Medical Assessment Pending list.
  
72. The respondent to pay the applicant's reasonably necessary medical expenses resulting from the injury.