WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **7058/20**
Applicant: **Dawne Nicholson**
Respondent: **Woolworths Ltd**
Date of Determination: **18 February 2021**
Citation No: **[2021] NSWWCC 53**

The Commission determines:

1. The applicant suffered a consequential condition to her right knee as a result of the injury to her left knee on 30 January 2018.

2. Award for the applicant on the claim for the right knee surgery recommended by Dr Cossetto. The respondent is to pay the costs of the surgery recommended by Dr Cossetto, and associated expenses.

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

NICHOLAS READ
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 NICHOLAS READ, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Disputes Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Dawne Nicholson, the applicant, was employed by Woolworths Ltd (the respondent) as a petrol station operator. On 30 January 2018, the applicant sustained an injury to her left knee when she attempted to evade a large threatening dog.

2. The applicant brought an application in the Commission claiming the costs of surgery to her left knee. In late 2019 Arbitrator Harris delivered an ex tempore decision in which he found the surgery was reasonably necessary as a result of the injury and ordered the respondent to pay the costs of the surgery. On 24 February 2020 the applicant had total arthroplasty surgery on her left knee.

3. In this matter the applicant claims she developed a consequential condition to her right knee as a result of the injury and seeks an order that the respondent pay the cost of total arthroplasty surgery on her right knee.

ISSUE FOR DETERMINATION

4. The issues for determination are:

    (a) Whether the applicant suffered a consequential condition to her right knee as a result of the injury to her left knee on 30 January 2018; and

    (b) Whether the claimed surgery is a reasonably necessary medical expense as a result of any injury to the right knee.

Matters previously notified as disputed

5. The issues were notified a dispute notice issued a dispute notice pursuant to section 78 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) dated 30 June 2020.

PROCEDURE BEFORE THE COMMISSION

6. The parties attended a conciliation/arbitration before me on 8 February 2021.

7. Mr Stephen Hickey of counsel appeared for the applicant. Mr Tom Grimes appeared for the respondent.

8. I was satisfied that the parties to the dispute understood the nature of the application and the legal implications of the assertions made in the information supplied. I used my best endeavours to attempt to bring the parties to a settlement acceptable to them. I was satisfied that the parties had sufficient opportunity to explore settlement and that they were unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary evidence

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

    (a) Application to Resolve a Dispute, and attachments (ARD);

(b) Reply filed by the respondent, and attachments (Reply); and

(c) Application to Admit Late Documents lodged by the applicant dated 12 January 2021 (ALD).

EVIDENCE

10. In a statement attached the ARD the applicant set out the history of her injury to her left knee and said that she was certified fit to return to pre-injury duties in mid-July 2018. The applicant said despite being certified fit to return to work she continued to experience pain in her left knee. The applicant said around July 2018 she first felt pain in her right knee. According to the applicant, she had avoided putting stress on her left knee due to ongoing pain (ARD page 1).

11. The applicant said from early November 2018 to mid-January 2019 she continued to experience pain in her left knee and increasing pain in her right knee (ARD page 2). The applicant saw her treating orthopaedic surgeon, Dr David Cossetto, who eventually recommended surgery in the form of left total knee arthroplasty.

12. Following a determination by the Commission in late 2019, On 24 February 2020 the applicant had surgery on her left knee. Relevantly, at the same time Dr Cossetto performed an intra-articular guided cortisone injection into the applicant's right knee to attempt to relieve symptoms in that knee.

13. In a statement dated 30 November 2020 the applicant said:

> "As a result of my left knee injury I had to avoid putting weight on my left leg due to the pain in my left knee. As a result of the extra weight on my right leg I began feeling increasing pain in my right knee that I had not experienced at any stage prior to my left knee injury. Prior to my left knee injury, I had not suffered any pain in either my right or left knee...
>
> "After the left knee surgery, I could not put any weight on my left knee. This meant that I needed to put further weight onto my right knee and during this time the right knee became more and more painful."

14. The applicant said the injection into her right knee on 25 February 2020 provided her with some relief and enabled her to walk on the right leg a little, but this only lasted about two weeks (ALD page 1).

15. The applicant said she had been unable to walk properly since her accident and had trouble standing in the kitchen to cook. The applicant said the injury to her left knee had affected her diet and she became more reliant on takeaway food. According to the applicant, her weight had increased over 30kg since 30 January 2018.

Medical evidence

16. In or around February 2018 Dr Cossetto recommended a left knee arthroscopy. The procedure was performed on 29 March 2018 and involved a partial medial meniscectomy. Dr Cossetto said post-operatively the applicant continued to have problems with the left knee despite an exercise program and intermittent use of anti-inflammatory medication (ADR page 99).

17. On 9 July 2018, the applicant's physiotherapist reported as follows:

> "Dawne has progressed steadily and is doing her exercise program well. She can now sit - stand hands-free from a normal chair. Dawne reported her walking is about the same as it was pre-injury and her right knee (not injured) is now often more sore [sic.] than the left one" (ARD page 88).

18. In a report dated 13 February 2019, Dr Cossetto noted the applicant had increasing pain in her left knee over the Christmas period related to the meniscectomy. Dr Cossetto recorded the applicant symptoms were becoming "so troublesome" in her left knee that she had begun to develop significant pain on the medial aspect of her right knee by way of favouring the right lower limb. Dr Cossetto said the applicant was having difficulty with stairs and experienced considerable pain at night time. Dr Cossetto referred the applicant for an MRI scan of the right knee (ARD page 91).

19. On 16 February 2019, the applicant had an MRI on her right knee which identified pathology including a tear in the medial meniscus and posterior horn, marked patellofemoral and moderate to marked medial compartment chondral loss, medial compartment synovitis and small ganglions at the posterior aspect of the joint (ARD page 93).

20. In a report dated 22 February 2019, Dr Cossetto recorded the applicant was having increasing pain in her right knee due to favouring of the right lower limb because of increasingly problematic post-traumatic osteoarthritic discomfort in her left knee. Dr Cossetto said the applicant was "heading towards" joint replacement surgery for the left knee (ARD page 95).

21. In a report dated 10 September 2019, Dr Cossetto again recorded that the applicant had experienced discomfort in both knees, the right becoming an issue due to favouring it as a result of ongoing discomfort in the left knee. Dr Cossetto noted the applicant had gained weight as a result of immobility and was having difficulty negotiating stairs. Dr Cossetto opined the applicant had begun to develop discomfort in her right knee as a result of favouring her right lower limb (ARD page 100).

22. On 18 December 2019, the applicant had an x-ray on her right knee which identified osteoarthritis of the medial tibiofemoral and medial patellofemoral compartments where cartilage was thinned in association with mild marginal osteophytic irregularity (ARD page 104).

23. On 25 February 2020, the applicant had total knee replacement surgery of her left knee.

24. In a report dated 8 April 2020, Dr Cossetto recorded the applicant's right knee symptoms had recurred following her return home from hospital and were having a marked impact on her recovery and general mobility. Dr Cossetto noted the applicant was consuming oral pain medication and using Canadian crutches to ambulate (ARD page 112).

25. Dr Cossetto opined the applicant's right knee symptoms were related to the injury that occurred to the left knee at work. Dr Cossetto recommended right total knee arthroplasty surgery and provided a referral to the applicant for a further cortisone injection (ARD page 112).

26. On 14 April 2020, the applicant underwent a further cortisone injection in her right knee.

27. In a report dated 29 April 2020, Dr Cossetto recorded the left total knee arthroplasty surgery had been delayed for a period of time due to the need to obtain a determination of liability from the Commission. Dr Cossetto said:

> "During this period of time [approximately one year] the right knee has developed significant exacerbation of previously underlying chondral wear with a medial meniscal tear and as a result the right knee symptoms are related to the initial left knee injury by way of prolonged significant favouring of the right leg due to ongoing symptoms and disability affecting the left knee" (ARD page 116).

28. In a further report dated 20 May 2020, Dr Cossetto said:

> "It is clear from my notes that she began to develop pain in her right knee by way of a compensatory injury over the Christmas period 2018 and this was in fact reported to me at the first visit in 2019 on 30 February. At that stage the right knee symptoms were worse than the left. An MRI scan was arranged and this was performed on 16/2/19 and showed the presence of a medial meniscal tear with medial compartment chondromalacia. Is therefore evident that the symptoms developed following the initial work injury to left knee which took place on 30/1/18 by way of compensation. As a result of the prolonged nonoperative treatment following arthroscopy with gradual deterioration of left knee symptoms, the applicant experienced weight gain and began to favour her right knee which led to symptoms in that joint" (ARD page 17).

29. The applicant saw Dr Ray Wallace, Orthopaedic Surgeon, on 3 June 2020. The applicant had previously seen Dr Wallace on 12 June 2019 however his earlier report was not admitted into evidence in this matter.

30. Dr Wallace noted the applicant was 168cm tall and weighed 130kg. Dr Wallace diagnosed the applicant as suffering from "degenerative osteoarthritis in her right knee (non-work-related)' (Reply page 4).

31. Dr Wallace opined there was no objective medical evidence that the applicant had suffered any work-related injury to her right knee. Dr Wallace said:

> "The notion that Ms Nicholson has suffered an injury at her right knee due to overcompensation as a result of her work-related left knee condition is entirely without merit nor supported by medical evidence.
>
> I refer to the American Medical Association Guides to the Evaluation of Disease and Injury Causation page 769, 'Evaluating causation for the opposite lower limb' and note the following: 'Unsupportable myth is that favouring one lower extremity will often result in injury or illness in the opposite lower limb.' The medical evidence proves that where one limb is injured, the force transmitted in the affected lower extremity was reduced but the force in the opposite limb was the same as in normal individuals. They further note, 'It may seem logical that manoeuvres designed to lessen the load on one leg must increase that on the other but there is no evidence to support this.'
>
> There is no medical evidence to support the notion that an injury to one limb causes an injury in the opposite limb due to overcompensation.
>
> Ms Nicholson's right knee condition is due to age-related degenerative osteoarthritis at the joint which was detailed on the MRI investigation carried out on 16 February 2019.
> Her right knee degenerative osteoarthritic condition is considerably aggravated by her obesity with the current body weight at 130kg and a BMI of 46" (Reply page 5).

32. In regard to the applicant's weight gain since her injury in January 2018 due to lack of mobility, Dr Wallace commented "There was no impediment to Ms Nicholson restricting her calorie intake during the period of her injury to prevent weight gain whilst her mobility was restricted." Dr Wallace said the applicant's pre-existing condition of degenerative osteoarthritis of the right knee has been significantly aggravated by her obesity (Reply page 6).

33. Dr Wallace said the "current treatment plan inclusive of surgery" was not reasonably necessary in relation to the applicant's right knee condition as her right knee condition was unrelated to employment.

34. Dr Wallace opined that the applicant should continue with unsupervised home exercises concentrating on mobilisation and strengthening with intermittent use of pain and anti-inflammatory medication (Reply page 7).

35. In a final report dated 28 September 2020, Dr Cossetto repeated his opinion that due to the prolonged nonoperative treatment following the left knee arthroscopy with gradual deterioration of the left knee symptoms, the applicant experienced significant weight gain and began to favour her right knee which exacerbated the symptoms associated with the MRI scan findings (ARD page 118b).

36. Dr Cossetto opined the applicant was suffering from right knee medial compartment symptomatic osteoarthritis which resulted from the injury sustained to the left knee on 30 January 2018 by way of favouring the right leg for weight-bearing.

37. Dr Cossetto firmly disagreed with Dr Wallace's opinion that there was no medical evidence that injury to one leg could materially contribute to injury to the other. Dr Cossetto opined the symptoms experienced in the applicant's right knee were the result of an aggravation of pre-existing medial compartment chondromalacia with meniscal tear. According to Dr Cossetto, the prognostic outlook in general was good if the recommended surgery was performed, however delaying the appropriate treatment gave rise to a risk of premature failure of the left total knee arthroplasty (ARD page 118c).

REASONS

Did the applicant suffer a consequential condition to her right knee as a result of the injury to her right knee on 30 January 2018?

38. The applicant has the burden of proof of establishing that she suffered a consequential condition to her right knee as a result of the injury to her left knee on 30 January 2018. The standard of proof is the balance of probabilities.

39. It is not necessary for the applicant to establish that she suffered an injury to her right knee within the meaning of that term in section 4 of the *Workers Compensation Act 1987* (the 1987 Act). All the applicant has to establish is that the symptoms and restrictions in her right knee have resulted from her left knee injury (*Moon v Conmah Pty Limited* [2009] NSWWCCPD 134 (21 October 2009) at [44]-[45]).

40. It is well recognised that a physical injury or condition can have multiple causes (*Migge v Wormald Bros Industries Ltd* (1973) 47 ALJR 236; *Pyrmont Publishing Co Pty Ltd v Peters* (1972) 46 WCR 27; *Cluff v Dorahy Bros (Wholesale) Pty Ltd* (1979) 53 WCR 167; *ACQ Pty Ltd v Cook* [2009] HCA 28 at [25] and [27]; [2009] HCA 28; 237 CLR 656). It is sufficient for the applicant to show that the injury to the left knee materially contributed to the development of a consequential condition in the right knee (cf. *Murphy v Allity Management Services Pty Ltd* [2015] NSWCCPD 49 (*Murphy*) at [57] – [58]).

41. Whether the applicant suffered a consequential condition to her right knee as a result of injury to her left knee is a question of fact to be determined on the basis of the evidence. A "common sense" approach is to be taken to determining questions of causation, taking into account the medical opinion evidence (*Kooragang Cement Pty Ltd v Bates* Kirby (1994) 35 NSWLR 452 (*Kooragang*); *Lithgow City Council v Jackson* [2011] HCA 36). In *Kooragang* the Court of Appeal referred to the fact that an event can set in train a series of events.

42. The applicant submitted she suffered a consequential condition to her right knee over time as a result of favouring the right knee and due to the injury and restrictions caused by her left knee injury and as a result of weight gain.

43. There satisfactory evidence of when the symptoms in the applicant's right knee commenced and in what circumstances.

44. The applicant says she was unable to walk properly since her accident which caused her to place extra weight on her right leg, which in turn impacted her right knee. Dr Cossetto reported the applicant had had difficulty ascending stairs and suffered from immobility following the left knee meniscectomy which had resulted in weight gain.

45. I am satisfied that the applicant has experienced long-term problems with her left knee post-injury. The applicant underwent a meniscectomy in March 2018, which did not provide effective relief. Efforts to rehabilitate the applicant's left knee by non-operative treatment were unsuccessful. Whilst the applicant was certified fit to return to her pre-injury duties in July 2018, Dr Cossetto's reports support ongoing symptoms and restrictions in the left knee.

46. From around February 2019 Dr Cossetto recommended total left knee arthroplasty surgery. At that time Dr Cossetto recommended the surgery take place in the "very near" future due to the significant impact the symptoms were having on the applicant's mobility and quality of life (ARD page 99). It is plausible that during the period leading up to the surgery on 25 February 2020 the applicant experienced worsening pain in her right knee as a result of favouring it and as a result of weight gain due to immobility, which caused additional weight to be placed on the right knee.

47. Following the applicant's surgery on 25 February 2020 she could not place weight upon her left knee causing her to rely more her right knee. It is common-sense that during period the applicant used Canadian crutches she would have placed more weight on her right leg and knee.

48. The respondent submitted that the timing of the onset of symptoms in the applicant's right knee (in July 2018) was not consistent with her suffering a consequential condition due to favouring or weight gain. In particular, it was submitted that that report of pain to the physiotherapist in early July 2018 was too early for it to be considered the development of a consequential condition.

49. This submission cannot be accepted for two reasons.

50. Firstly, the submission does not take into account the ongoing restrictions in the applicant's left knee since the date of injury. Whist the applicant may have experienced partial resolution of symptoms sufficient to enable her to return to work, the contemporaneous medical reports support ongoing symptoms post-meniscectomy. It is logical that the ongoing symptoms from 30 January 2018 to July 2018 may have caused the applicant to favour her right leg resulting in the development of symptoms in the right knee.

51. Secondly, and significantly, the submission incorrectly confines the applicant's case. The applicant does not rely exclusively on the development of symptoms in July 2018. Rather, the applicant's case is that she first experienced symptoms in her right knee in July 2018 and experienced worsening symptoms in the right knee over time due ongoing restrictions in the left knee. The applicant alleges that the symptoms in the right knee have resulted from the left knee injury over a period of time, including by way of weight gain resulting from reduced mobility and reliance on the right leg in the period following the 2020 left total knee arthroplasty surgery. The applicant's case is not confined to the development of symptoms in the right knee in the six months after the traumatic injury to the left knee.

52. I am not persuaded by the respondent's submission that the only explanation for the onset of symptoms in the right knee was due to degenerative change. The applicant has no prior history of right knee pain. The timing of the onset and worsening of symptoms correlates with the traumatic injury to the left knee and the ongoing restrictions with same.

53. I accept the respondent's submission that the pathology in the applicant's right knee is largely degenerative in nature. However, the issue for determination is not what has caused the pathology in the right knee but whether the left knee injury has materially contributed to the development of symptoms in the right knee. In my view, it is more likely than not that there is a connection between the injury to the left knee injury and the development of symptoms in the right knee, as opposed to the symptoms being of spontaneous onset due to degenerative change.

54. The respondent also submitted the more likely cause of the symptoms in the right knee was the applicant's weight, noting the past medical history included obesity in 2018. The respondent appropriately conceded that the record is not precise as to when the obesity was identified as a medical condition, and in particular, whether it was identified after the left knee injury on 30 January 2018. The record may in fact support the applicant's case that she experienced significant weight gain post-injury which contributed to the development of right knee symptoms.

55. The issue of whether the applicant suffered a consequential condition to her left knee must be determined having regard to the medical opinion evidence. The weight afforded to medical opinion evidence is to be determined by having regard to the correspondence of the opinion provided with the facts proved by admissible evidence (*OneSteel Reinforcing Pty Ltd v Sutton* [2012] NSWCA 282; *Hancock v East Coast Timber Products Pty Ltd* (at [77]).

56. Dr Cossetto has treated the applicant since 9 March 2019. I accept that applicant's submission that Dr Cossetto has provided a consistent opinion on the cause of the onset and worsening of symptoms in the right knee. The applicant's evidence provides an adequate factual foundation for Dr Cossetto's opinion. I find Dr Cossetto's opinion on the cause of the applicant's right knee symptoms persuasive.

57. Dr Wallace's opinion on causation is largely based on him not accepting an injury to a lower limb can cause injury in the opposite limb due to favouring. Dr Wallace cited the American Medical Associated Guides to Evaluation of Disease and Injury Causation as support for the notion that manoeuvres intended to lessen the load on one leg do not increase the load on the opposite leg. Unhelpfully, the Guides were not attached to Dr Wallace's report. It is not clear from the extracts in Dr Wallace's report whether the document relates to causation of a diagnosable injury, as opposed to development of a consequential condition. As noted above, all the applicant has to establish is that the symptoms in her right knee have resulted from her left knee injury.

58. Dr Cossetto firmly disagreed with Dr Wallace's view that an injury in one leg could not materially contribute to injury to the other. I am reluctant to accept as a matter of medical science that the development of a consequential condition in an opposite limb cannot come about by favouring. Whether an individual has suffered a consequential condition is an issue that must be determined on the facts of each case. It is not something that can be ruled out altogether by a body of medical belief.

59. However, even if the Guides do not support the notion of development of a consequential condition due to favouring, this does not provide a complete answer to the applicant's case, which is that she developed a consequential condition which worsened over time as a result of her left knee injury, including by way of weight gain, restricted mobility whilst awaiting left knee surgery and immobility following the 2020 surgery.

60. Dr Wallace accepted the applicant's weight had "considerably" aggravated the osteoarthritic pathology in her right knee. The applicant submitted, and I accept, Dr Wallace's opinion is consistent with the development of the consequential condition to her right knee in the circumstances of this case. This is because an injury can set in train a series of events. The series of events set in train in this case is the injury to the left knee, causing reduced mobility and weight gain, causing increased weight on the right leg, causing worsening symptoms in the right knee.

61. To the extent that Dr Wallace stated there was no impediment to the applicant restricting her calorie intake during the period of her injury to prevent weight gain, this is does not amount to a defence under the workers compensation legislation.

62. Finally, I am not satisfied that Dr Wallace has given adequate consideration to the specific circumstances of the applicant's case in forming his opinion on causation. I am not satisfied that Dr Wallace adequately considered the significant period of time the applicant suffered restrictions in her left knee leading up to the total knee arthroplasty and the need to immobilise the left leg after same. It seems to me to be common sense that the applicant would experience symptoms in her right knee as a result of favouring during these periods of restriction of the left knee.

63. Having regard to the evidence and the submissions, I am satisfied on the balance of probabilities that the applicant suffered a consequential condition to her right knee as a result of the injury to her left knee. I am satisfied there is a common-sense causal connection between the ongoing symptoms in the left knee, the applicant's weight gain, and the development and worsening of symptoms in the right knee. I accept the opinion of Dr Cossetto. I am not persuaded by the opinion of Dr Wallace.

Is the claimed surgery to the right knee reasonably necessary?

64. Section 60(1) of the 1987 Act provides that if, as a result of an injury received by a worker, it is reasonably necessary that medical treatment be provided, the worker's employer is liable to pay the cost of that treatment.

65. What constitutes "reasonably necessary" treatment was considered by Burke CCJ in the context of the former legislation in *Rose v Health Commission (NSW)* (1986) 2 NSWCCR 32 (*Rose*) (at [42]):

> "Treatment, in the medical or therapeutic context, relates to the management of disease, illness or injury by the provision of medication, surgery or other medical service designed to arrest or abate the progress of the condition or to alleviate, cure or remedy the condition. It is the provision of such services for the purpose of limiting the deleterious effects of a condition and restoring health. If the particular 'treatment' cannot, in reason, be found to have that purpose or be competent to achieve that purpose, then it is certainly not reasonable treatment of the condition

and is really not treatment at all. In that sense, an employer can only be liable for the cost of reasonable treatment."

66. Proposed treatment will not be relevant if the particular treatment is not appropriate or competent to alleviate the effects of injury. Any necessity for relevant treatment results from the injury where its purpose and potential effect is to alleviate the consequences of injury (see *Rose*).

67. Burke CCJ also considered the relevant factors relating to reasonably necessary treatment under section 60 of the 1987 Act in *Bartolo v Western Sydney Area Health Service* (1997) 14 NSWCCR 233 (*Bartolo*). In *Bartolo* Burke CCJ provided:

> "The question is should the patient have this treatment or not. If it is better that he have it, then it is necessary and should not be forborne. If in reason it should be said that the patient should not do without this treatment, then it satisfies the test of being reasonably necessary."

68. In *Diab v NRMA Ltd* [2014] NSWCCPD 72, Roche DP summarised a non-exhaustive list of factors that may be taken into account when considering the "reasonableness" of proposed treatment:

> "88. In the context of s 60, the relevant matters, according to the criteria of reasonableness, include, but are not necessarily limited to, the matters noted by Burke CCJ at point (5) in Rose (see [76] above), namely:
>
> (a) the appropriateness of the particular treatment;
> (b) the availability of alternative treatment, and its potential effectiveness;
> (c) the cost of the treatment;
> (d) the actual or potential effectiveness of the treatment, and
> (e) the acceptance by medical experts of the treatment as being appropriate and likely to be effective.
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> 89. With respect to point (d), it should be noted that while the effectiveness of the treatment is relevant to whether the treatment was reasonably necessary, it is certainly not determinative. The evidence may show that the same outcome could be achieved by a different treatment, but at a much lower cost. Similarly, bearing in mind that all treatment, especially surgery, carries a risk of a less than ideal result, a poor outcome does not necessarily mean that the treatment was not reasonably necessary. As always, each case will depend on its facts."

69. In *Murphy* Roche DP considered the question of causation under section 60 of the 1987 Act. In that matter, the Commission was tasked with determining whether a need for surgery resulted from a workplace injury or a subsequent slip and fall in a supermarket where the worker had injured the same body part. Roche DP found that the arbitrator fell into error by failing to properly analyse the evidence regarding the slip and fall.

70. At [57] to [58] of *Murphy* Roche DP stated:

> "[57] Moreover, even if the fall at Coles contributed to the need for surgery, that would not necessarily defeat Ms Murphy's claim. That is because a condition can have multiple causes (*Migge v Wormald Bros Industries Ltd* (1973) 47 ALJR 236; *Pyrmont Publishing Co Pty Ltd v Peters* (1972) 46 WCR 27; *Cluff v Dorahy Bros (Wholesale) Pty Ltd* (1979) 53 WCR 167; *ACQ Pty Ltd v Cook* [2009] HCA 28 at [25] and [27]; [2009] HCA 28; 237 CLR 656). The work injury does not have to be the only, or even a substantial, cause of the need for the relevant treatment before the cost of that treatment is recoverable under s 60 of the 1987 Act.

[58] Ms Murphy only has to establish, applying the commonsense test of causation (*Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452; 10 NSWCCR 796), that the treatment is reasonably necessary 'as a result of' the injury (see *Taxis Combined Services (Victoria) Pty Ltd v Schokman* [2014] NSWWCCPD 18 at [40]–[55]). That is, she has to establish that the injury materially contributed to the need for the surgery (see the discussion on the test of causation in *Sutherland Shire Council v Baltica General Insurance Co Ltd* (1996) 12 NSWCCR 716)."

71. The applicant has the onus to prove her case on the balance of probabilities. I must be satisfied on the balance of probabilities that it is better that the applicant have the proposed right total knee arthroplasty than it be forborne.

72. I have found that the applicant developed a consequential condition to her right knee as a result of the injury to her left knee. Accordingly, I am satisfied the injury to the left knee has materially contributed to a need for the proposed surgery to the right knee. The need for the surgery is the onset and continuation of symptoms in the right knee, which in my view has resulted from the left knee injury.

73. Dr Cossetto opined that prognostic outcome for the surgery was good, however delaying it may give rise to the risk of premature failure of the left total knee arthroplasty. Accepting Dr Cossetto's opinion, the benefits to the applicant of the surgery would outweigh the risk of it not being performed. I note in relation to the left knee Dr Cossetto initially recommended conservative treatment modalities and was hopeful total knee arthroplasty could be delayed for as long as possible (ARD page 91).

74. I am satisfied that efforts to treat the applicant's right knee to date have not been successful. The applicant has undergone conservative treatment of her right knee since at least July 2018, including two cortisone injections which provided only temporary relief. I am satisfied that the recommend surgery is appropriate treatment aimed at alleviating the applicant's right knee symptoms.

75. Dr Wallace opined the current treatment plan inclusive of the proposed surgery was not reasonably necessary because the applicant's right knee condition was unrelated to her employment. Dr Wallace's opinion appears to be entirely based on there being no causal connection between the need for any medical treatment of the right knee and the applicant's injury to the left. I am satisfied on the balance of probabilities the applicant suffered a consequential condition to her right knee as a result of the injury to her left knee. Accordingly, I reject Dr Wallace's opinion.

76. Contrary to the respondent's submission, it is not clear to me that Dr Wallace has provided an opinion that the proposed surgery was not appropriate and alternative conservative treatment should be maintained. Dr Wallace was asked to comment on what treatment the applicant should undertake to maintain a level of capacity should the respondent concede liability at some point in time for the right knee surgery. Dr Wallace was not asked about the availability of alternative treatment and its potential effectiveness. In any event, I am not persuaded that the alternative course of maintaining conservative treatment of the right knee would be potentially effective for the applicant having regard to the treatment that has been undertaken on the right knee to date.

77. I accept the costs of the treatment are relatively high, however this factor is outweighed by the potential benefits of the proposed surgery, which is aimed at alleviating the symptoms in the applicant's right knee and restoring a level of function and mobility. I am not satisfied that the same outcome could be achieved by alternative conservative treatment at a lower cost.

78. For the above reasons, I am satisfied on the balance of probabilities that it is better the applicant have the right total knee arthroplasty than it be forborne. There will be an award for the applicant on the claim for the right total knee arthroplasty, and associated expenses.