

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON

1 IN RE: CRYSTAL F. SMITH ) DOCKET NO. 11 17485  
2 CLAIM NO. AK-66966 ) PROPOSED DECISION AND ORDER

3 INDUSTRIAL APPEALS JUDGE: Tom M. Kalenius  
4

5 APPEARANCES:

6 Claimant, Crystal F. Smith, by  
7 Williams, Wyckoff & Ostrander, PLLC, per  
8 Wayne L. Williams

9 Employer, Ostrom Mushroom Farm Co., by  
10 Penser Northamerica, Inc., per  
11 Karen Lawson

12 Department of Labor and Industries, by  
13 The Office of the Attorney General, per  
14 Ailene Limric, Assistant

15 The claimant, Crystal F. Smith, filed an appeal with the Board of Industrial Insurance  
16 Appeals on July 8, 2011, from an order of the Department of Labor and Industries dated May 23,  
17 2011. In this order, the Department affirmed a Department order dated January 11, 2011, and  
18 ended time-loss compensation benefits as paid through January 23, 2010, and closed the claim  
19 with no permanent partial disability award. The Department order is **REVERSED AND**  
20 **REMANDED.**

21 PRELIMINARY MATTERS

22 On September 29, 2011, the parties agreed to include the Jurisdictional History in the  
23 Board's record. That history establishes the Board's jurisdiction in this appeal.

24 The deposition of Paul J. Allen, M.D., taken on December 15, 2011, was published on  
25 receipt. All objections are overruled. All motions are denied.

26 The deposition of Jerome Zechmann, M.D., taken on January 4, 2012, was published on  
27 receipt. All objections are overruled, except for the objection at page 14, which is sustained. All  
28 motions are denied.

29 The deposition of Edward I. Dagher, M.D., taken on January 5, 2012, was published on  
30 receipt. All objections are overruled, except for the objections at pages 23-25, 27, 33, 36, which are  
31 sustained. All motions are denied.  
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1 ISSUES

- 2 1. Whether the industrial injury of December 8, 2009, was a proximate  
3 cause of a right ankle and right knee condition and the need for further  
4 medical treatment, including an orthopedic evaluation of the right ankle,  
5 stress x-rays after the injection of a local anesthetic, as well as standing  
6 and supine x-rays of the right knee.
- 7 2. As of May 23, 2011, were the claimant's conditions fixed or had they  
8 reached maximum medical improvement?
- 9 3. If fixed, what level of permanent impairment best describes the  
10 permanent partial disability proximately caused by the industrial injury of  
11 December 8, 2009?

12 SUMMARY OF THE EVIDENCE

13 Crystal F. Smith, the claimant, was born on December 21, 1962. Ms. Smith is 5 feet  
14 2 inches tall and weighs about 210 pounds. She is right handed. Ms. Smith completed two  
15 Associates of Arts degrees. The first degree was in industrial maintenance. The second degree  
16 was in Heating, Ventilation, and Air Conditioning. Further, Ms. Smith attended Clover Park  
17 Technical College's program in facilities maintenance engineering. Ms. Smith is trained in boiler  
18 repair and is licensed as a Class 3 operating engineer and as a pipefitter.

19 Ms. Smith worked as a millwright at Ostrom's Mushroom Farm, Inc. She climbed ladders,  
20 lifted, and carried industrial fittings and tools. She installed piping and repaired pumps. These  
21 activities required Ms. Smith to kneel.

22 In January 2008, Ms. Smith injured her back and neck while in the course of her employment  
23 when the ladder she was climbing collapsed, causing her to fall. Ms. Smith sought chiropractic  
24 treatment and returned to work. She transitioned from light duties to her regular duties after that  
25 injury.

26 On December 8, 2009, Ms. Smith slipped and fell while carrying plumbing fittings and two  
27 large pipe wrenches. Ms. Smith was in the course of her employment at the time of the injury to her  
28 right ankle and knee. Ms. Smith complained of right ankle pain immediately after the industrial  
29 injury. Ms. Smith returned to work with accommodations by the employer to allow her to alternate  
30 her sitting and standing. She continued to suffer from symptoms when she bore her weight on her  
31 right leg. Ms. Smith sought treatment from an orthopedic surgeon, Dr. Zechmann.

32 Dr. Jerome Zechmann treated Ms. Smith between February 22, 2010, and December 2010.  
Ms. Smith was initially evaluated and prescribed physical therapy. Dr. Zechmann monitored  
Ms. Smith's treatment in the form of physical therapy by consulting with a physician's assistant.

1 Conservative measures did not restore Ms. Smith's function in her right leg. She was terminated  
2 from her job on February 26, 2010.

3 Dr. Zechmann was presented with Ms. Smith's complaints of right knee pain, as well as  
4 ankle, hip, and back pain. Dr. Zechmann took a history of the claimant's right knee pain. The onset  
5 was on December 8, 2009, when she fell on the ice-coated roof while carrying pipes in one hand  
6 and wrenches in the other.

7 The MRI of the right knee performed on February 12, 2010, only depicted mild cartilage  
8 damage. Dr. Zechmann performed an arthroscopy of the right knee on April 27, 2010.  
9 Dr. Zechmann testified he hoped it might show a tear of a meniscus or chondral flap, that would  
10 explain the claimant's continued right leg symptoms and accompanying pain. Dr. Zechmann found  
11 no meniscus tear, but discovered chondral damage and thickened tissue in the patellafemoral joint  
12 that was surgically removed.

13 Dr. Zechmann testified the right knee condition had reached a plateau by June 2010. A  
14 steroid injection was performed on November 1, 2010, but only temporarily alleviated symptoms.  
15 Dr. Zechmann did not prescribe further treatment for the right knee.

16 Dr. Zechmann did not examine the right ankle, but noted objective findings on December 8,  
17 2010, of ligament tears. Dr. Zechmann recommended further assessment of the claimant's right  
18 ankle.

19 Dr. Edward I. Dagher, a physiatrist, certified by the American Academy of Physical Medicine  
20 and Rehabilitation, examined the claimant on December 22, 2010. Dr. Zechmann, Dr. Dagher's  
21 partner, referred the claimant to Dr. Dagher for a closing and impairment rating examination of the  
22 right knee.

23 Dr. Dagher testified that his understanding of the industrial injury of December 8, 2009, was  
24 the claimant slipped on an icy roof while carrying pipefitting tools and parts and injured her right  
25 knee and ankle.

26 Dr. Dagher reviewed Dr. Zechmann's operative report of the arthroscopic procedure to the  
27 right knee. Dr. Zechmann reported Grade 3 chondral damage to the medial compartment of the  
28 right knee. Dr. Dagher explained the right knee had frayed and arthritic cartilage. A fold in tissue,  
29 usually from an acute injury or chronic ongoing irritation, was surgically removed from the  
30 patellafemoral compartment.

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1 Dr. Dagher examined the claimant's right ankle. Dr. Dagher found puffiness on the outside  
2 of the right ankle, but no weakness or instability. Dr. Dagher did not find any restricted range of  
3 motion in the claimant's right ankle.

4 Dr. Dagher testified that further treatment was not necessary or proper. Dr. Dagher found no  
5 ratable impairment of the right knee or right ankle because he did not relate the Grade 3 chondral  
6 damage at the medial femoral condyle to the industrial injury.

7 Dr. Paul J. Allen, a physiatrist, certified by the American Academy of Physical Medicine and  
8 Rehabilitation, examined the claimant on September 13, 2011. Dr. Allen reviewed the diagnostic  
9 studies and clinical findings of the claimant's right knee. Dr. Allen reviewed both the reports, as  
10 well as the digital images of the x-rays and an MRI of the right knee.

11 Dr. Allen found Dr. Zechmann's operative report significant because it described a defect in  
12 the cartilage of the right knee. There was a narrowing of the cartilage interval measuring 2.1  
13 millimeters that was not graded. Dr. Allen testified that Grade 2 narrowing had a diameter less than  
14 1.2 centimeters. Grade 3 was greater than 1.25 centimeters in diameter. The normal dimension is  
15 4 millimeters or greater. Dr. Allen testified the defect was equal to Grade 3.

16 Dr. Allen examined the claimant's right knee and found crepitation and palpable clicking. A  
17 stress test of the right knee caused pain while extended.

18 Dr. Allen agreed with the diagnoses of right knee sprain with cartilage or meniscal tear.  
19 Dr. Allen related the right-knee cartilage injury to the industrial injury of December 8, 2009.  
20 Dr. Allen testified the chondral/cartilage damage to the claimant's right knee may have, in part,  
21 pre-existed the industrial injury, but the chondral damage was related to the industrial injury.

22 Dr. Allen recommended further x-rays to precisely rate the impairment of the right knee.  
23 Dr. Allen relied on the *American Medical Association's Guides to the Evaluation of Permanent*  
24 *Impairment, 5<sup>th</sup> Edition*, Chapter 17. Dr. Allen referred to Dr. Zechmann's observation of cartilage  
25 damage of the right knee, as well as the plica removal from the patellofemoral joint. Dr. Allen  
26 applied Table 17-31 on page 544 for impairments of affected lower extremity based on reduced  
27 cartilage interval, under Section 17.2H, 'Arthritis,' on page 544. Dr. Allen testified the extent of  
28 impairment calculated from the AMA Guides mandated x-rays taken while weight bearing. Dr. Allen  
29 explained the x-rays taken on February 12, 2010, may not have been taken during weight bearing.

1 Dr. Allen reviewed the medical records that described right ankle laxity, a partial ligament  
2 tear, swelling, and a Grade 2 sprain. During his examination on September 13, 2011, Dr. Allen  
3 found greater range of motion on the left ankle than on the claimant's right ankle. Dr. Allen  
4 corrected typographical errors in his report and specified that the difference in the range of ankle  
5 motion was 3 degrees or 12 degrees of extension in the right ankle and 15 degrees in the left ankle.  
6 There were hypertropic changes, including swelling around the joint and focal pain that worsened  
7 with the stress of twisting the ankle. Dr. Allen reproduced audible and palpable clicking when  
8 repeatedly moving the ankle passively. Dr. Allen noted a feeling of decreased stability during  
9 dynamic testing of the right ankle.

10 Dr. Allen diagnosed a right ankle sprain with evidence of lateral ligament complex sprain that  
11 remained symptomatic. Dr. Allen described a bone bruise and strain at the junction of the muscles  
12 below the right knee, proximately caused by the industrial injury of December 8, 2009.

13 Dr. Allen recommended additional diagnostic testing of the right ankle, including an  
14 evaluation by an orthopedist to assess the integrity of the ligament following review of current  
15 x-rays to grade the ligament injury, if any.

#### 16 DECISION

17 Proximate cause means a cause which, in a direct sequence, unbroken by any new  
18 independent cause, produces the condition or disability complained of, and without which such  
19 condition or disability would not have happened. *Bremerton v. Shreeve*, 55 Wn. App. 334, 340  
20 (fn. 5) (Div. II, 1989).

21 Here, the claimant alleges that, but for the industrial injury in December 2009, there would  
22 have been no aggravation of the pre-existing right knee conditions that resulted in the need to  
23 surgically remove tissue from the right patellafemoral joint. Further, the claimant presented the  
24 testimony of Dr. Allen in support of further diagnostic treatment in the form of additional x-rays.

25 The employer argued there was no right knee and right ankle condition, proximately caused  
26 by the industrial injury in December 2009 that required further treatment as of May 23, 2011. The  
27 employer presented the testimony of Dr. Dagher that the trauma associated with the industrial injury  
28 was insufficient to be a proximate cause of a right knee or right ankle condition. Dr. Dagher agreed  
29 to the possibility of arthritis being lit up or rendered symptomatic as a result of trauma.

30 Dr. Dagher's first argument was the trauma of the industrial injury was insufficient to cause  
31 the claimant's Grade 3 chondral injury to her right knee. Dr. Dagher expected a greater traumatic  
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1 event. However, Dr. Dagher did not note in his history of the industrial injury that the claimant did  
2 the splits during the injury and then struck her right knee. Dr. Allen reported this mechanism as  
3 including a blow to the right knee. Dr. Zechmann, like Dr. Allen, was informed that the claimant  
4 performed a semi split during the industrial injury. Dr. Dagher based on his opinion on a foundation  
5 that lacked an understanding of all material facts.

6 The arthroscopic surgery performed by Dr. Zechman included the removal of tissue at the  
7 patellofemoral joint. Dr. Dagher further alleged that the patellofemoral joint was not damaged due  
8 to the industrial injury. Dr. Dagher testified that if there was damage to the patellofemoral joint,  
9 Dr. Dagher would have reviewed the *American Medical Association's Guides to the Evaluation of*  
10 *Permanent Impairment, 5<sup>th</sup> Edition*, to confirm that Dr. Allen's recommendation was according to the  
11 recommended procedures. Dr. Dagher did not testify that he performed the further review he  
12 described.

13 Dr. Dagher did not deny that Ms. Smith may have a ratable impairment of the right knee.  
14 Dr. Dagher testified he did not rate the impairment of the right knee because any impairment was  
15 not proximately caused by the industrial injury. Dr. Dagher conceded he did not consider the  
16 possibility that the industrial injury acted on, aggravated, or affected the natural progression of the  
17 pre-existing arthritis in the right knee. Dr. Allen testified the chondral/cartilage damage was  
18 proximately caused by the industrial injury, even though, it may have, in part, pre-existed the  
19 industrial injury.

20 On December 3, 2010, an MRI of the right ankle was performed, suggesting a sprain. The  
21 MRI showed cysts in the ankle and thickening of the ligaments consistent with a Grade 2 sprain.  
22 Dr. Dagher testified the cysts were probably related to partial tearing of the ligaments on the outside  
23 of the ankle. Dr. Dagher concluded there had been a previous sprain with mild scarring.  
24 Dr. Dagher testified that a partial tear in a ligament may be asymptomatic. The tenosynovitis was  
25 focal and not generalized. Dr. Dagher relied on the absence of swelling noted by the radiologist  
26 and concluded there was nothing of concern, even though he made objective findings of the effects  
27 of a sprain on the ligaments. Dr. Zechmann issued a report dated December 8, 2010, that  
28 described tears in the ligaments of the right ankle. The history presented to Dr. Dagher by the  
29 claimant was that she rolled her right ankle several times over the few months prior to his  
30 examination on December 22, 2010. Tenderness to deep palpation over the anterior talofibular  
31 ligament on the outside of the ankle was noted.

1 Ms. Smith was not found during any of the examinations to have exaggerated her symptoms.  
2 Ms. Smith complained of sharp pain in her right leg, restricting her function. She continued to suffer  
3 right ankle symptoms through May 23, 2011.

4 Considering the credibility of her complaints in the context of the persuasive medical  
5 evidence of Dr. Allen, supports the persistent nature of the conditions in the right ankle and knee,  
6 proximately caused by the industrial injury. Dr. Zechman testified that normally the findings were  
7 not "something that normally can make a huge difference for somebody's pain syndrome."  
8 Zechmann Dep. at 10-11. Ms. Smith reported that extended standing and walking, cleaning,  
9 gardening, driving, and climbing caused her right knee and ankle to ache. The symptoms were  
10 alleviated by changing position, applying ice, resting, and over the counter pain medications,  
11 including ibuprofen. Dr. Allen testified that Ms. Smith had alternated between various medications  
12 for the past two years. Dr. Zechmann noted prolonged use of ibuprofen for the past two years.

13 By September 2011, Dr. Allen measured restricted extension of the right ankle and audible  
14 and palpable clicking during range of motion. The MRI of the right ankle depicted cysts and  
15 thickening of the ligaments consistent with a Grade 2 sprain. The tendon supplying the right ankle  
16 was mildly inflamed. Dr. Allen referred the claimant to an ankle specialist to perform x-rays after  
17 injection of a local anesthetic. Dr. Allen prescribed further x-ray studies to compare the right and  
18 left ankles. Further, the studies were necessary and proper to diagnose the instability  
19 demonstrated by the loose ligaments in the right ankle.

20 Dr. Dagher agreed that physical therapy might benefit Ms. Smith, but Dr. Dagher believed  
21 Ms. Smith's right ankle was not unstable because a reduced range of motion did not establish  
22 instability. Dr. Dagher only noted a history of the claimant feeling unstable. Dr. Dagher found the  
23 right ankle normal other than calcium deposits on the bottom of the heel bone and small traction  
24 spurs. On that basis, Dr. Dagher recommended no further treatment.

25 Dr. Allen prescribed further x-rays and a workup by an orthopedist with ankle expertise,  
26 including the consideration of stress x-rays after injection of a local anesthetic to evaluate for  
27 instability the treatment recommended was diagnostic in nature. Finally, Dr. Allen recommended  
28 further x-rays of the right knee, taken during weight bearing.

29 The persuasive medical evidence was that the right knee and ankle conditions were  
30 proximately caused by the industrial injury. Although arthritis may take time to develop, the  
31 testimony that all conditions were unrelated to the industrial injury was unpersuasive. Based upon  
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1 the medical evidence presented, it was premature and unnecessary as of May 23, 2011, to finally  
2 determine or limit the exact diagnoses of Ms. Smith's conditions caused by her industrial injury.  
3 Such a determination could unjustifiably prevent further proper and necessary medical service for  
4 the effects of the industrial injury. *In re Tammy R. Dennis*, Dckt. No. 01 16709 (January 31, 2003).

5 Under RCW 51.36.010, an injured worker is entitled to receive proper and necessary  
6 medical treatment "necessary to his or her more complete recovery up until the worker's condition  
7 has reached maximum medical improvement or is fixed and stable." *WAC 296-20-01002; In re*  
8 *Freeda Hicks*, BIIA Dec., 01 14838 (2004); *In re Robert G. Thorsen*, Dckt. No. 05 23423  
9 (January 24, 2007).

10 Because the conditions had not reached maximum medical improvement and required  
11 further diagnostic treatment, a finding with regard to permanent partial disability was also  
12 premature.

13 The Department order dated May 23, 2011, in which the Department affirmed the order  
14 dated January 11, 2011, and closed the claim was incorrect and should be reversed. The matter  
15 should be remanded to the Department with directions to provide further treatment.

#### 16 FINDINGS OF FACT

- 17 1. On September 29, 2011, an industrial appeals judge certified that the  
18 parties agreed to include the Jurisdictional History in the Board record  
solely for jurisdictional purposes.
- 19 2. Ms. Smith sustained an industrial injury on December 8, 2009, that  
20 proximately caused conditions diagnosed as sprains of the right knee  
21 and ankle that aggravated pre-existing conditions.
- 22 3. As of May 23, 2011, the claimant's conditions had not reached  
23 maximum medical improvement and needed further proper and  
necessary medical treatment.

#### 24 CONCLUSIONS OF LAW

- 25 1. Based on the record, the Board of Industrial Insurance Appeals has  
26 jurisdiction over the parties to and the subject matter of this appeal.
- 27 2. Ms. Smith's right ankle and knee conditions had not reached maximum  
28 medical improvement as of May 23, 2011, and she is entitled to proper  
29 and necessary medical treatment as authorized by RCW 51.36.010.  
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- 1 3. The Department order dated May 23, 2011, is incorrect and is reversed.  
2 This matter is remanded to the Department to provide proper and  
3 necessary treatment.

4 DATED: MAR 21 2012

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7 Tom M. Kalenius  
8 Industrial Appeals Judge  
9 Board of Industrial Insurance Appeals  
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