MARIA REYES, Employee,
v.
CITY OF WILMINGTON, Employer.

INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

Hearing No. 1350709

Mailed Date: September 5, 2014
September 4, 2014

DECISION ON PETITION TO DETERMINE ADDITIONAL COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on July 24, 2014, in the Hearing Room of the Board, in Wilmington, Delaware.

PRESENT:

MARILYN J. DOTO

WILLIAM F. HARE

Susan D. Mack, Workers' Compensation Board, for the Board

APPEARANCES:

Frederick S. Freibott, Esquire, Attorney for the Employee

Andrea C. Panico, Esquire, Attorney for the Employer

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NATURE AND STAGE OF THE PROCEEDINGS

Maria Reyes ("Claimant") filed a Petition to Determine Additional Compensation Due ("DACD") on December 2, 2013 seeking a finding of compensability for a left foot fracture and proposed left foot surgery that she asserts to be causally related to an acknowledged work accident that occurred on February 24, 2010. The Employer, the City of Wilmington, denies a causal relationship between the left foot injury and the work accident. The Employer therefore disputes claims for medical/surgical expenses and disability benefits.

A hearing was held on the pending petition on July 24, 2014.

SUMMARY OF THE EVIDENCE

The parties stipulated to the following facts: Claimant Maria Reyes suffered injuries to, *inter alia,* her lumbar spine on February 24, 2010 in the course and scope of her employment with the City of Wilmington. Claimant's injuries were accepted by the Employer and she has received various workers' compensation benefits since the accident. On November 2, 2013, Claimant alleges that she fell and suffered injuries to her left lower extremity as a result of her lumbar spine condition from the original work accident. Claimant's average weekly wage is $766.10 and her compensation rate for total disability is $510.76 per week.

Claimant Maria Reyes testified that she is 53 years old and has worked for the City of Wilmington for 30 years. She currently works in the Emergency Communications Records Division. In February 2010, Claimant slipped and fell in the ladies room. She injured her neck, left shoulder, left wrist, and low back. Claimant subsequently underwent compensable surgeries to her neck and her left shoulder. In 2010, Claimant received physical therapy and epidural injections directed at her low back injury. She described sharp stabbing pain in the low back and numbness in both lower extremities, worse on the left. Various tests were performed on the low back, and she was diagnosed

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with three herniated discs in the lumbar spine. Claimant testified that her condition has worsened since 2010. She has weakness, numbness, and constant cramping in her legs. If she sits for a long period, she feels burning and

cramping in her legs and must stand up. Claimant acknowledged that Dr. Schratz told her an EMG showed a pinched nerve on the right side of the low back, but she confirmed that her symptoms were worse on the left side.

On October 30, 2013, Claimant experienced severe pain from her neck down to her lower back while at work. Her supervisor took her to Dr. Meyers' office, and he sent her to the emergency room. On Monday November 2, 2013, Claimant reported to the dispensary at work to tell them she had gone to the emergency room because of a fall over the weekend. She was at home when she developed leg pain while seated and got up to relieve the pain. As she did so, her left leg gave out and she fell to the ground. Claimant got herself up and at first was concerned about her neck and back, but then pain began in the left leg. She was diagnosed with a fractured bone in her foot. Dr. Brady scheduled surgery in February 2014, but Claimant did not go through with it, because the insurance carrier denied coverage for the surgery. Claimant did not have enough sick time accrued to take off work after the surgery. Claimant testified that her foot still hurts, and she still wants to undergo the surgery on her foot.

On cross-examination, Claimant agreed that Dr. Meyers noted neck, back, and right lower extremity pain on October 30, 2013 and also indicated she was stable. Claimant explained that the worst pain when she went to the ER was in her neck and low back. Claimant did not believe the fall occurred on a work day. She was sitting on a sofa watching a movie. After about 25 minutes of sitting, she felt cramping and numbness in her legs. The symptoms started below her waist and worked their way down her legs. About three minutes after the leg symptoms began, she stood up and stepped forward on her left leg. The leg gave out and she fell straight down onto her legs.

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Claimant put an ice pack on her leg after the fall and took some medication, but she did not think the foot was broken. Claimant testified that she gets numbness and cramping in her legs daily, about fifteen to twenty minutes after sitting down, and needs to get up and move around to relieve the symptoms. She develops the same symptoms after standing for fifteen to twenty minutes.

Claimant stated that her legs had given out in the past and resulted in a trip to the ER. Claimant presented records from Christiana Care dated July 10, 2011. She claimed she went there because she could not feel her legs and could not get out of bed when she woke up that day. Her brother came over to her residence to take her to the hospital. Claimant had urinated in bed that morning because she was unable to get up to go to the bathroom. The ER record from the hospital indicated Claimant presented that day with low back pain that had increased over the previous 48 hours. The diagnosis was left-sided sciatica. Claimant acknowledged that nothing in the record indicated she had been unable to move or get out of bed. Claimant stated that she has fallen twice since November 2, 2013 as a result of numbness and tingling in her legs. She did not go to the ER on those occasions. She thinks she told Dr. Meyers about a fall on July 16, 2014.

Dr. Yadhati recommended Claimant see Dr. Yalamanchili about the pinched nerve in her low back. Clamant has an appointment with Dr. Yalamanchili on September 17, 2014. Claimant agreed that the EMG performed in April 2014 found a problem at L4 on the right side.

On re-direct, Claimant reviewed the October 2, 2013 record from Dr. Meyers that identified pain in the neck, left leg, right foot, and mid-low back. It also documented tingling and numbness in the left leg. (Claimant's Exhibit 1) Dr. Meyers' record from October 30, 2013 included a drawing with lines from the middle of the low back and down the left leg. (Claimant's Exhibit 2)

Under questioning by the Board, Claimant testified that Dr. Brady had recommended left foot surgery. He told her she would need a couple of months off from work afterwards due to the need

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for a metal rod. Dr. Meyers provides Claimant with pain management and referrals to specialists. Clamant takes medications for her pain. Her leg first gave out in July 2011, on the occasion when she was unable to feel her legs and went to the ER. In July 2014, Claimant was going to fall, but she caught herself and banged her knees and bruised them. Another episode of her leg giving way occurred, but she could not recall the date. Claimant had undergone some physical therapy before the fall in November 2013. She did not engage in other exercise. She parks in a handicapped spot at work.

The Board observed that Claimant stood up periodically during the hearing.

Dr. Jeffrey Meyers, a specialist in physical medicine and rehabilitation, testified by deposition on behalf of Claimant Maria Reyes. (Claimant's Exhibit 3) Dr. Meyers prepared a report dated November 20, 2013 in which he opined that Claimant had fractured her left foot in a fall caused by numbness in her left lower extremity, and that this numbness was in turn related to the original work accident that occurred on February 24, 2010. Dr. Meyers first saw Claimant in regard to the original work injury about a week after the accident. Claimant told Dr. Meyers that she was in her usual state of health until February 24, 2010. She worked for the City of Wilmington as a senior clerk. She was in the ladies' room at work when she slipped on water on the floor. Her right foot went out from under her and she fell onto her right buttock and twisted her right ankle. She also tried to protect herself while falling with her left hand and felt a jolt through the left hand up towards her neck. Claimant immediately felt discomfort in her buttock and right ankle and reported the incident to her supervisor. She sought medical treatment and received treatment initially for the left wrist, right hip, and right ankle and then later for neck symptoms. Dr. Meyers' treatment focused on Claimant's neck, left hand, right buttock, right hip, and right ankle, as well as some mild general myofascial complaints. Within a few weeks, Dr. Meyers also started treatment for low back

complaints, because he realized the buttock and sciatic region complaints were related to the low back. Claimant also had complaints in both lower extremities in 2010. Dr. Meyers has treated Claimant on a regular basis since March 2010. He provided conservative treatment such as therapy and diagnostic studies.

Eventually, Claimant underwent a left rotator cuff repair in September 2011. She also underwent cervical spine surgery with Dr. Yalamanchili in May 2013 for persistent neck complaints. Claimant has had complaints of low back or radicular-type complaints since 2010. Dr. Meyers pointed to a clinical note of low back complaints dated March 30, 2010, and explained that he realized later that Claimant's hip and buttock complaints were related to her back. Diagnostic imaging performed on April 21, 2010 showed a disc extrusion at L1-2 and a protrusion at L5-S1 and L4-5. An April 2010 EMG documented radiculopathy in the lower extremities. Dr. Meyers then reviewed records from 2010 to 2013 showing consistent complaints of numbness and tingling in Claimant's left leg. He recorded a history of leg cramping and numbness, left great than right, on December 1, 2010. A sharp shooting pain into the lower extremities was reported by Claimant on January 19, 2011. Claimant reported sudden, sharp, stabbing pain and weakness in the left leg and painful walking on March 20, 2012. She described two episodes of pain and numbness in the left leg and buttock at a visit in August 2012. On January 14, 2013, Claimant indicated she had a numbness sensation and pins and needles in the left leg. The pins and needles suggested a nerve problem. Dr. Meyers opined that these radiating symptoms from the low back were causally related to the work accident in February 2010.

On October 2, 2013, Dr. Meyers documented complaints of pain in both lower extremities and compensation with the left lower extremity during ambulation. A pain diagram completed by Claimant at the visit indicated pain from the low back to the hip and all the way down the left leg.

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The only marking on the right leg was on the ankle. Claimant came to see Dr. Meyers again on October 30, 2013. She marked symptoms on the low back and a line going all the way down the left leg. Dr. Meyers agreed these pain markings were consistent with a lumbar spine injury causing symptoms in the low back and radicular symptoms down the leg. On exam, Dr. Meyers noted decreased left foot sensation. Dr. Meyers commented that Claimant's low back and left leg symptoms appeared to be getting worse during the year or two before the October 2013 exams.

Dr. Meyers testified that Claimant called his office on November 4, 2013 and reported a fall on November 2, 2013. Claimant described sitting down on that "Saturday" and feeling tingling in her leg as if it was going numb. She stood up, and upon standing, she ended up breaking her left ankle. She was given crutches at the hospital and told to follow up with a surgeon. She had a hard time moving around. Dr. Meyers spoke with her later that day and confirmed she had broken her foot and was following with an orthopedist. Dr. Meyers confirmed his opinion that this fall in November 2013 was causally related to the original work accident in February 2010. He explained that Claimant was having significant symptoms in both lower extremities, including the left, at the two prior visits to his office, and radicular symptoms such as numbness or pins and needles can cause a leg to give way and lead to a fall with secondary injuries. He opined that Claimant had impaired sensation and lacked full function in her left leg, which caused to fall and fracture her left foot. Dr. Meyers agreed that the emergency room treatment for the foot fracture, as well as followup orthopedic care with Dr. Brady, was reasonable, necessary, and related to the original accident in February 2010. Dr. Meyers confirmed that surgery had been recommended but so far had not been performed. The surgery would also be reasonable, necessary, and related to the February 2010 work accident, in his opinion. Claimant had nothing mechanically wrong with her left leg or left foot prior to the fall in November 2013.

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Dr. Meyers has continued to treat Claimant since the fall in November 2013. Claimant still experiences low back pain and left-sided lower extremity radicular symptoms. Her recovery has been slow. She has continued to work throughout this time period as she is able to tolerate, although she was totally disabled from work for a time after fracturing her foot. Dr. Meyers agreed this period of disability was reasonable, necessary, and related to the February 2010 work accident. He issued her a disability slip covering the period November 1, 2013 to November 17, 2013. Claimant continues to receive treatment for her left foot and her low back. She is seeing Dr. Yadhati for spinal injections because of her level of symptoms. Dr. Meyers confirmed that the treatment Claimant had received throughout the years, and after November 1, 2013, was within the health care practice guidelines. Dr. Meyers reviewed a list of outstanding medical bills, and he agreed that the bills were reasonable, necessary, and related to the February 24, 2010 work accident, including any treatment for the fractured left foot since November 2013.

On cross-examination, Dr. Meyers testified that EMGs in April 2010 and August 2011 showed bilateral S1 radiculopathy. Another EMG was recommended after 2011, but it was never performed. Dr. Meyers confirmed that his October 2, 2013 clinical note indicated under Chief Complaint that Claimant had compensation with the left lower extremity during ambulation, and his exam of the left lower extremity that day showed good muscle strength and range of motion. Claimant had returned to work by the next time Dr. Meyers saw her on October 30, 2013. She had some increased pain, and he recommended therapy to address some neck and low back pain and injections with Dr. Yadhati. Claimant was also referred to Dr. Yalamanchili. Dr. Meyers agreed that the Chief Complaint indicated Claimant was having low back and right lower extremity pain that was present but stable. Dr. Meyers than pointed out that the exam showed decreased sensation in the left foot. He

conceded that the exam also showed good muscle strength in the right and left lower

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extremities. Dr. Meyers has reviewed the emergency records related to the fall at home. The History portion of the ER record indicated Claimant reported her left foot was injured as a result of a fall while at home. She was diagnosed with a fracture of the fifth metatarsal of the left foot. Claimant provided Dr. Meyers with a history of the accident over the telephone on November 4, 2013. Dr. Meyers related the left foot fracture to the initial work accident based on Claimant's prior left lower extremity symptoms, including numbness and tingling, that had occurred up to within a week of the fall at home. Dr. Meyers spoke to Claimant on the telephone again on November 18,2013, when she reported continued lower extremity pain and numbness and her lower extremity going out. He ordered an EMG for low back pain with bilateral lower extremity radiation, but this was never performed. Claimant next saw Dr. Meyers in person on December 19, 2013. She noted cramping and weakness in the left leg again at that visit. She also indicated symptoms down the left leg on a pain diagram. Dr. Meyers eventually reviewed the results of a followup lumbar spine MRI done on December 16, 2013. This showed disc protrusion and annular fissure at L1-2, disc bulge at L2-3, left-sided disc protrusion at L3-4 that was not definitely compressing the left L3 nerve root, and right bulge abutting the right L4 nerve root at L4-5. These were similar findings to the previous MRI exam. Dr. Meyers confirmed that he continued to manage Claimant's care, and Claimant also continued to see Dr. Brady for the left foot fracture and Dr. Yalamanchili for low back and cervical spine issues. As to future treatment, Dr. Meyers testified that Claimant could continue to require therapy and may require low back surgery if the neurological problems from her low back indicated surgery was needed. She could also likely require interventional spine injections.

On re-direct, Dr. Meyers confirmed that Claimant would possibly require foot surgery as well. He reviewed the December 2013 MRI report, which offered a finding of "small left-sided foraminal disc protrusion abutting without definitely compressing the left L3 nerve root." (*Id.* at 40)

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Dr. Meyers agreed that this was the radiologist's way of stating he suspected some nerve root involvement but could not tell definitely. The 2010 MRI did not refer to anything compressing the nerve root at L3-4. Dr. Meyers felt the 2013 MRI showed some progression of symptoms that was consistent with the increasing left leg complaints Claimant had within a few months of suffering her foot fracture. Dr. Meyers agreed that the history of the November 2013 fall was consistent with a radicular numbness causing give way of the foot.

Dr. John B. Townsend III, a neurologist, testified for the Employer, the City of Wilmington. (Employer's Exhibit 1) Dr. Townsend evaluated Claimant on behalf of the Employer on June 30, 2011, June 21, 2012, and January 14, 2014 and has reviewed Claimant's relevant medical records. He also prepared a supplemental report dated April 8, 2014 to address the compensability of Claimant's left foot injury and psychological treatment. He was aware that the Employer had acknowledged injury to Claimant's cervical spine, lumbar spine, left wrist, and right ankle as a result of a fall at work on February 24, 2010. Claimant had slipped and fallen in a restroom and in the process twisted her right ankle and landed on her left hand. Subsequent treatment included diagnostic studies such as EMGs and injections to the lumbar region as well as treatment directed to the neck and shoulder. Claimant eventually saw Dr. Katz in March 2011 with complaints of low back pain. An MRI showed a left-sided disc herniation at L1-2, and an EMG suggested chronic bilateral S1 radiculopathy. By the end of 2011, Claimant complained of tenderness over the left sacroiliac joint, and she was believed to suffer from an irritation of the SI

joint. Neck and low back complaints continued in 2012. Dr. Yalamanchili saw her in 2012 and eventually performed surgery on the cervical spine in May 2013. Claimant underwent injections with Dr. Yadhati to the cervical and lumbar spine. Dr. Meyers had treated Claimant for lumbar spine complaints since 2010.

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At the most recent DME in January 2014, Claimant reported that she was working for the City. Claimant continued to identify neck pain with numbness in the left arm and the left leg. She also complained of low back pain, explaining that the doctors had not done anything for her back because of their focus on her neck pain. Claimant's shoulder had improved. At times, her right ankle would swell and hurt. Claimant also told Dr. Townsend that she had injured her left ankle when she stood up after her leg had fallen asleep. Claimant stated that she got up and her foot gave out. Claimant also indicated her legs had been going numb for about two years. She had gone to the hospital several times because she was not able to feel her legs. She stated that the symptoms were worse on the left side. She had lost her urine on two occasions when she went to the hospital. Dr. Townsend commented that he had reviewed the hospital records and found no records reflecting Claimant presenting for treatment due to lost feeling in her legs or loss of urine. Dr. Townsend conducted a physical examination. He found diminished range of motion in the back without spasm and no leg pain with straight leg raising. Reflexes, strength, and sensation in the lower extremities were normal.

Dr. Townsend was asked to review diagnostic test results. He confirmed that an EMG in April 2010 suggested an S1 radiculopathy, though the test was incomplete. A lumbar spine MRI in April 2010 showed a disc osteophyte complex at L1-2 that indented the dural sac and lateralized more to the left side. It also showed protrusions and narrowing at the L5-S1 level, at L3-4 on the left, and at L4-5 on the right. A second lumbar spine MRI on March 30, 2011 looked about the same, with a stable left paracentral extrusion at L1-2 with mild impression on the dural sac and stable broad-based protrusions at L3-4, L4-5, and L5-S1. Another MRI was performed on December 16, 2013. The findings were similar as on the previous MRIs. Dr. Townsend described the findings as consistent with lumbar spondylosis with diffuse degenerative changes.

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Dr. Townsend also reviewed Dr. Meyers' records from October 2 and October 30, 2013. On the October 2, 2013 note, Dr. Meyers documented complaints of low back pain, device pain, and right ankle pain. Claimant reported compensating with her left lower extremity when she walked. Dr. Meyers' exam indicated good strength in both lower extremities, though Claimant had pain in the left calf and right ankle. Dr. Townsend saw no indication of lost sensation in the left lower extremity. The clinical note from October 30, 2013 was similar, although Dr. Townsend agreed that Dr. Meyers documented some decreased left foot sensation on exam. Dr. Townsend complained that this notation was not helpful because it failed to indicate where on the foot the loss of sensation was observed. Dr. Townsend next reviewed an ER note from November 3, 2013. The chief complaint was left foot injury last night. Claimant stated her foot gave out and twisted under her. She was diagnosed with a left fifth metatarsal fracture. She was sent to Dr. Brady for followup. Dr. Brady first saw Claimant on November 5, 2013. Claimant complained of left foot pain that was achy and sharp, worse with climbing stairs, walking, and standing. She described issues with balance and numbness and tingling in her legs since her cervical spine surgery in May 2013. She told Dr. Brady that, on November 2, 2013, she got up from a chair to try to work out the tingling and she lost her balance and fell. She waited until the next day to seek treatment, because she thought she had just sprained her ankle. Dr. Brady saw Claimant a number of times after that. On November 18, 2013, Dr. Brady suggested an open reduction internal fixation of the left fifth metatarsal. He also felt Claimant had a superimposed ankle sprain. He recommended a boot. He indicated

Claimant was disabled from November 5, 2013 to November 18, 2013. Dr. Brady last saw Claimant on February 10, 2014, when he noted that she was stable and her fracture was healed with moderate shortening and angulation. He planned to see her again in a few months, and if she still had issues, he would

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discuss a possible osteotomy, or realignment of the toe. He released her to wear regular shoes and allowed weightbearing as tolerated.

Dr. Townsend disagreed with Dr. Meyers' opinion that the left foot fracture was causally related to Claimant's lower back complaints from the original work accident. He reached this conclusion because he found no evidence of gait abnormality in his examination of her or in the records from Dr. Yalamanchili or Dr. Meyers. He also saw no record of persistent leg paresthesias, or numbness and tingling, or a tendency for the legs to give way. Dr. Townsend further testified that the legs can go numb for lots of reasons, especially if a person has been seated for awhile. Local pressure on nerves and/or blood vessels can occur. Claimant had not been evaluated for a vascular reason for loss of sensation in the legs. Dr. Townsend also saw no EMG evidence of an ongoing radiculopathy or for pressure on the nerve roots that might cause a radiculopathy, and therefore no objective finding to provide a radicular reason for Claimant to lose sensation in her left leg. Dr. Townsend thought it just as likely, if not more likely, that Claimant got numbness and tingling in her leg from sitting in the wrong position, rather than due to a low back problem or radiculopathy.

Dr. Townsend nonetheless agreed that the treatment provided by Christiana Care and Dr. Brady for Claimant's left foot injury was reasonable and necessary. He also found the total disability period through November 18, 2013 to be reasonable. In addition, Dr. Townsend agreed that an osteotomy and realignment of the toe would be reasonable if Claimant continued to have ongoing problems.

On cross-examination, Dr. Townsend acknowledged that his original report in this case recognized that Claimant suffered neck, hip, shoulder, and low back injuries in the February 2010 work accident. He specifically concluded that Claimant aggravated a preexisting injury to the low back. Claimant also complained about low back pain at each DME with him in 2011, 2012, and

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2014. Dr. Townsend confirmed that an April 2010 EMG suggested bilateral S1 radiculopathy. In addition, Dr. Meyers had administered a number of trigger point injections to Claimant's lumbar spine between 2010 and 2013, including one in October 2013. Dr. Townsend agreed that the MRI in 2010 showed pathology at multiple levels of the lumbar spine, but he did not agree that Claimant had significant left-sided pathology. The study showed mild narrowing of the neural foramina, not severe narrowing or pressure on the spinal cord. The finding at L1-2 was abnormal, but the other findings were degenerative. He conceded that the MRI findings could have played a role in Claimant's complaints, though he did not believe her physical exam was consistent with a radiculopathy or pressure on the nerve roots. Dr. Townsend confirmed that Claimant told him the doctors had been focusing more on her neck than her low back, and she did undergo surgery to the cervical spine in May 2013. He conceded that she complained about low back pain and received treatment directed to her low back from 2010 through 2014. Claimant told him that Dr. Brady wanted to perform surgery on the left foot, but she had not gone forward with it because it was not an accepted claim. She indicated an intent to have the surgery. Dr. Townsend acknowledged that it was medically possible for the numbness in Claimant's left leg, which caused her to stand up and then fall, to have been caused by radicular symptoms from a lumbar spine injury. He concluded in his supplemental report dated April 8, 2014 that, more likely than not, the fall was unrelated to the work accident. He conceded, however, that it was possible that the fall was related to the work accident and that radicular

numbness from the lumbar spine could cause a fall. In his report, he indicated that he did not see intermittent complaints about Claimant's legs falling asleep or complaints about a balance problem in Claimant's records. Dr. Townsend was shown the pain diagrams and records from Dr. Meyers' exams on October 2 and October 30, 2013, and he conceded that they indicated pain in the low back and going down the left leg. Only the ankle was marked on the right side. Dr.

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Townsend agreed that the markings represented radicular symptoms of pain down the leg, but he saw no reason for them from a structural standpoint. Dr. Townsend confirmed that Dr. Meyers' January 14, 2013 record documented a numb sensation and pins and needles in the left leg; he commented that this could be consistent with a neuropathy or vascular problems rather than radiculopathy, though a radiculopathy was possible. Dr. Townsend also confirmed that Dr. Meyers documented pain and numbness in the left buttocks and leg and numbness/weakness, repetitive pins and needles in the left leg in July and August 2012. Dr. Townsend felt Dr. Meyers contradicted himself on the issue of weakness, because he also noted normal strength on exam. Dr. Meyers did document diminished sensation in the left foot. Dr. Townsend agreed that patients with radiating pain or other radicular symptoms do not necessarily have them all the time. They would be present a good portion of the time if they were caused by pressure on a nerve root. Dr. Townsend felt the reports documented subjective symptoms only without objective physical findings to support that Claimant had a radiculopathy. He does not believe Claimant has radiculopathy. He conceded that Dr. Meyers documented a positive straight leg raising test in 2012 and also referred to hypertonicity on exam. On March 20, 2012, Claimant told Dr. Meyers that a few days earlier she had been walking when she had a sudden, sharp, stabbing pain and weakness in the left leg. At a January 2011 visit, Claimant complained of neck pain and shooting pain to the lower extremities. On December 1, 2010, she had leg cramping, numbness, left greater than right. Dr. Townsend conceded that subjective complaints of numbness or pins and needles or weakness in the left lower extremity had been documented between 2010 and 2013; he insisted that the documentation also showed good strength in the legs without any objective findings. Dr. Townsend also disagreed that the records documented intermittent complaints about Claimant's legs falling asleep or causing multiple falls.

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Dr. Townsend reiterated his opinion that the treatment with Dr. Brady for the left foot injury was reasonable and necessary and the medical bills incurred by Claimant were reasonable and necessary.

On re-direct, Dr. Townsend agreed that Claimant has had nonverifiable radicular complaints. He found on exam that her legs had good strength and that she did not have an issue with her gait. His opinion was that the incident in November 2013 was not related to the lumbar spine injury in February 2010.

The Employer offered the ER record from July 10, 2011 into the hearing record. (Employer's Exhibit 2)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Compensability of Medical Treatment

Claimant Maria Reyes seeks a finding that she suffered a left foot injury on November 2, 2013 that was causally related to a compensable low back injury that occurred on February 24, 2010 while she was working for the City of Wilmington. Claimant also seeks compensation for medical expenses and disability related to the left foot fracture and seeks approval for surgery to the left foot. The Employer has acknowledged that a compensable low back injury occurred on February 24, 2010; however, the Employer denies any causal relationship between the left foot fracture on November 2, 2013 and the

compensable low back injury. Because this is Claimant's petition, she must prove her claims by a preponderance of the evidence. *See Lomascolo v. RAF Industries,* No. 93A-11-013, 1994 WL 380989, at *2 (Del. Super. Ct. June 29, 1994).

Under Delaware law, an employer is obligated to pay for reasonable and necessary medical expenses related to a work injury. *See* DEL. CODE ANN. tit. 19, § 2322; *Turnbull v. Perdue Farms,* C.A. No. 98A-02-001, 1998 WL 281201, at *2 (Del. Super. Ct. May 18, 1998), *aff'd,* 723 A.2d 398

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(Del. 1998). In determining causation in an identifiable industrial accident, the Board applies the "but for" standard of causation. *See State v. Steen,* 719 A.2d 930, 932 (Del. 1998); *Reese v. Home Budget Center,* 619 A.2d 907, 910 (Del. 1992). "The accident need not be the sole cause or even a substantial cause of the injury. If the accident provided the 'setting' or 'trigger,' causation is satisfied for purposes of compensability." *Reese,* 619 A.2d at 910. Furthermore, "[a] preexisting disease or infirmity, whether overt or latent, does not disqualify a claim for workers' compensation if the employment aggravated, accelerated, or in combination with the infirmity produced the disability." *Id.*

The primary issue before the Board is the causal relationship between the left foot fracture that occurred in November 2013 and the acknowledged work injury to the low back that occurred in February 2010. The medical expert for the Employer, Dr. Townsend, agreed that the medical treatment, disability, and proposed surgery to the left foot were all reasonable and necessary for the injury Claimant suffered; he disputed only the issue of causation. After weighing the evidence, the Board finds that Claimant has proved by a preponderance of the evidence that the left foot fracture was caused by the compensable low back injury, and thereby was also causally related to the original work accident in February 2010. In reaching this decision, the Board chooses to rely on the opinion of Dr. Meyers over that of Dr. Townsend. *See, e.g., Peden v. Dentsply International,* C.A. No. 03A-11-003, 2004 WL 2735461, at *5 (Del. Super. Ct. Nov. 1, 2004) (finding the Board is free to choose between differing medical opinions that are supported by substantial evidence).

The Board finds Dr. Meyers' opinion to be persuasive because it is the most consistent with the history of Claimant's symptoms and clinical findings documented in the clinical records, the description of the November 2, 2013 accident, and the diagnostic testing supporting a diagnosis of radiculopathy. Dr. Meyers pointed to specific records documenting low back complaints and

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radicular-type symptoms in the lower extremities from 2010 through October 30, 2013, just a few days before the fall in which Claimant fractured her foot. These symptoms included numbness, tingling, "pins and needles," and cramping, which were worse in the left leg than the right, as well as reports of sharp shooting pain into the lower extremities and weakness in the left leg. In particular, Dr. Meyers reviewed records from October 2, 2013 and October 30, 2013 in which Claimant indicated pain and symptoms in the low back and down the left leg on pain diagrams. Dr. Meyers agreed that these pain markings were consistent with a lumbar spine injury causing symptoms in the low back and radicular symptoms down the left leg. He also testified that the symptoms of pins and needles in the leg that Claimant had described on several occasions suggested a nerve problem radiating from the low back. Dr. Townsend conceded that numbness and pins and needles symptoms could be from a radiculopathy. In addition to the subjective complaints reported by Claimant, Dr. Meyers made a clinical finding of decreased sensation in the left foot during his examination of Claimant on October 30, 2013, only three days before the fall at home. He also documented a positive straight leg raising test and hypertonicity on the left side in 2012. Claimant testified about a July 10, 2011 trip to the emergency room because she

was unable to feel her legs and could not get herself out of bed. The ER record documented a complaint of increasing low back pain and a diagnosis of left-sided sciatica.

These prior reports of left leg symptoms documented in the medical records correspond with the reported symptoms on the date of Claimant's fall at home. Claimant testified that she felt painful cramping and numbness in her legs while seated on a sofa at home on November 2, 2013, and when she stood up to relieve the symptoms, her left leg gave out and she fell, fracturing her left foot in the process. The Board found Claimant's testimony to be straightforward, consistent, and credible. Claimant further testified that she has experienced other episodes since November 2013 where her

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leg gave way and she has fallen or almost fallen. Claimant also described symptoms of numbness and cramping in her legs daily that occur within fifteen or twenty minutes of sitting down; she must get up to relieve the symptoms. The similarity between Claimant's lower extremity radicular symptoms since 2010 and the symptoms that precipitated the fall on November 2, 2013 support Dr. Meyers' opinion that the fall and left foot injury in November 2013 are causally related to the 2010 low back injury. Dr. Townsend acknowledged that it was medically possible for the numbness Claimant described having on November 2, 2013 to be caused by radicular symptoms from a lumbar spine injury. He also conceded that radicular numbness from the lumbar spine could cause a fall such as Claimant described, though he thought it more likely that something unrelated caused Claimant's fall.

Dr. Meyers' opinion also finds support in the results of diagnostic testing. An MRI from April 2010 showed a disc extrusion at L1-2 and protrusions at L5-S1 and L4-5. An MRI in March 2011 showed a left-sided disc herniation at L1-2. A followup MRI from December 2013 revealed similar findings to the earlier MRIs, and in particular indicated a left-sided disc protrusion at L3-4 that the radiologist described as abutting but not definitely compressing the left L3 nerve root. Dr. Meyers explained that this was the radiologist's way of stating he suspected some nerve root involvement but could not tell definitely from the MRI. Dr. Meyers felt the 2013 MRI showed some progression in Claimant's condition that was consistent with the increasing left leg complaints Claimant had been making within a few months of her foot fracture. In addition, Dr. Meyers confirmed that Claimant had two EMGs performed in 2010 and 2011 that both suggested a bilateral S1 radiculopathy. The Board accepts Dr. Meyers' opinion that the diagnostic testing shows pathology consistent with Claimant's left lower extremity symptoms and the fall that occurred in November 2013.

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Based on the evidence discussed above, the Board is convinced, by a preponderance of the evidence, that left leg symptoms related to Claimant's compensable low back injury caused Claimant to fall on November 2, 2013 and fracture her left foot. The left foot injury and the related medical/surgical expenses and disability are therefore causally related to the work accident on February 24, 2010. The Board accordingly grants Claimant's petition.

Attorney's Fee and Medical Witness Fee

A claimant who receives an award is entitled to a reasonable attorney's fee in an amount not to exceed thirty percent of the award or ten times the average weekly wage in Delaware as announced by the Secretary of Labor at the time of the award, whichever is less. 19 *Del. C.* § 2320. At the current time, the maximum based on the average weekly wage calculates to $9,983.50.

In setting an attorney's fee, the Board considers the factors set forth in *General Motors Corp. v. Cox,* 304 A.2d 55, 57 (Del. 1973). Claimant, as the party seeking the award of the fee, bears the burden of proof in providing sufficient information to make the requisite calculation. Claimant has successfully proved that

she is entitled to reimbursement for medical expenses and disability related to a left foot fracture suffered on November 2, 2013. Claimant's counsel submitted an affidavit stating that he spent at least 25 hours preparing for the hearing. Claimant's counsel has been a member of the Delaware bar since 1989 and is experienced in the practice of workers' compensation law. Counsel's initial contact with Claimant occurred on May 26, 2010. Counsel does not represent Claimant in anything other than a workers' compensation context. The Board does not find this case to be any more complex than the usual case. Claimant's counsel represents that he has a contingent fee arrangement with Claimant. His fee for non-contingent fee cases is $275.00 per hour. A copy of the contingent fee agreement was provided to the Board. There is no evidence that Employer is unable to pay an attorney's fee.

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Based on the factors set forth above and the attorneys' fees customarily charged in this locality for similar proceedings, the Board finds that an attorney's fee in the amount of $6500 is reasonable in this case.

A medical witness fee for testimony on behalf of Claimant is awarded to Claimant, in accordance with title 19, section 2322(e) of the *Delaware Code*.

STATEMENT OF THE DETERMINATION

For the reasons set forth above, the Board GRANTS Claimant's Petition for Additional Compensation Due and finds that Claimant injured her left foot on November 2, 2013 as a result of a compensable injury to her low back suffered on February 24, 2010. Claimant is therefore entitled to compensation for reasonable and necessary medical/surgical expenses and disability related to the left foot injury. The Board awards an attorney's fee in the amount of $6500 and a medical witness fee.

IT IS SO ORDERED THIS 4th DAY OF SEPTEMBER, 2014.

INDUSTRIAL ACCIDENT BOARD

/s/_____
MARILYN J. DOTO

/s/_____
WILLIAM F. HARE

I, Susan D. Mack, Board, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

/s/_____

Mailed Date: 9-5-14

/s/_____
OWC Staff