



**STATE BOARD OF WORKERS' COMPENSATION**  
**601 Broad Street, SE, Suite D**  
**Gainesville, GA 30501**  
**[www.sbwc.georgia.gov](http://www.sbwc.georgia.gov)**

**STATEMENT OF THE CASE**

The employer provides home health care assistance to patients. The employee worked for the employer as a home health aid for patients.

On March 30, 2021, the employee was moving a patient from a bedside chair to her bed when she felt immediate and sudden left knee pain. The employee timely reported her accident and left knee injury to the employer, and subsequently, the employer/insurer accepted this claim as compensable by paying the employee weekly TTD benefits.

Counsel for the employee filed a Form WC-14 requesting the following: (1) medical treatment—left knee replacement surgery as recommended by the employee's ATP, Dr. Derek Moore; and (2) assessed attorney fees. (T. 7-14, C-11, pp. 5-6).

In response, counsel for the employer/insurer asserts the employee has undergone a change in condition for the better (i.e., the employee's current left knee condition is no longer related to her March 30, 2021 work-related accident), and as such, the employee is not entitled to additional TTD benefits and medical treatment. (C-11, pp. 8-9, D-7, pp. 4-5). In addition, counsel for the employer/insurer requests reimbursement of TTD benefits and assessed attorney fees. (T. 9-10, 137-138).

A hearing was held on May 18, 2022, in Gainesville, Georgia.

Since this is a compensable claim, the parties are stipulating to the following: jurisdiction, the employer being subject to the Act, county of injury: Banks, venue: Hall, average weekly wage of \$553.70 with a corresponding comp rate of \$369.13 per week, coverage, employment, accident, left knee injury, and notice. (T. 5-6).

The record consists of C-1 through C-12 and D-1 through D-15. (T. 11-12, 140). After the hearing, the employer/insurer submitted D-15 without objection, and this exhibit was included in the record for consideration. The transcript was filed with the Board on June 21, 2022.

By July 5, 2022, both attorneys filed well written briefs for my consideration.

After a review of the record as a whole, including careful consideration of the arguments presented, I find the preponderance of competent and credible evidence reveals as follows:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The employer provides home health services to patients. In April of 2017, the employee was hired by the employer as an aid for patients. (T. 17, 19-21, C-1, D-13).
2. In this job, the employee would work six days a week, eight hours per day, with a patient at their home assisting with meals, bathing, cleaning, using the bathroom, etc. (T. 17, 19-21, C-1,C-3, D-13).
3. To this extent, the employee was assigned a patient, Ms. C. (T. 22, 31). Ms. C lived in an apartment complex in Homer, Georgia. (T. 32). The employee would go each day to Ms. C's residence to assist her with daily living issues. (T. 20, 22). The employee was not supervised by the employer at Ms. C's residence.
4. Ms. C weighed approximately 350 lbs. and used a wheelchair. In this regard, Ms. C needed a lot of physical assistance. The employee worked from 8:00 a.m. to 4:00 p.m., six days per week. (T. 22-23, C-3, pp. 1-15, C-11, p. 2, D-7, p. 3). The record indicates the employee worked up to 48 hours per week fairly regularly. Id. The employee assisted Ms. C with the following: bathing, using the bathroom, transferring her to and from her bed, dressing, preparing and serving breakfast and lunch, cleaning the kitchen, washing dishes, cleaning the bathroom, vacuuming and sweeping, doing laundry at the apartment's laundry facility, grocery shopping, driving Ms. C to doctor's appointments and other errands, changing bedsheets, and taking out the trash. (T. 20, 33-35, 116-117, C-3, p. 1).
5. One of the employee's supervisors testified that the employee did a good job. (T. 118).
6. On March 30, 2021, the employee was assisting her patient from a potty chair (next to her bed) to her bed when she felt immediate and sudden pain in her left knee. (T. 18-19, 36-42). The employee commendably continued to perform some of the needed duties for Ms. C. Id.
7. Within hours of occurrence, the employee timely reported her accident and left knee injury to the employer. (T. 41-43, 66). The employer instructed the employee to seek medical treatment at Lanier Urgent Care. Id.

8. On the day of her accident, the employee sought medical treatment at Lanier Urgent Care. (C-4, D-3). The employee reported her accident to this facility. (C-4, p. 1). The employee reported a history of chronic arthritis pain in multiple joints, including her left knee. Id. However, the employee informed the provider, "This was different from arthritis pain." Id. Dr. Perry documented swelling of the employee's left knee, tenderness to palpitation, and limited range of motion. (C-4, p. 2). Dr. Perry noted the employee could not place weight on her left knee. Id. The employee was diagnosed with left medial knee pain. (C-4, p. 3). Conservative care was recommended. Id. The employee was given light-duty restrictions of no standing, no walking, no lifting, no kneeling/squatting, and to wear a brace. (C-4, p. 4).
9. When the employer could not provide light-duty work to the employee, the employer/insurer commenced weekly TTD benefits to the employee. (T. 19, 22, C-11, p. 1, D-7, pp. 1-2).
10. In April of 2021, the employee began treating with Dr. Derek Moore at Longstreet Clinic. (C-5, C-6). The employee reported worsening left knee pain, along with swelling. (C-6, p. 1). The employee was noted to have zero extension in her left knee and documented positive medical McMurray test. (C-5, pp. 3-4). The employee was given work restrictions. (C-8, p. 42).
11. By May of 2021, with limited mobility still being observed, physical therapy and injections were recommended for her left knee condition. (C-7, pp. 2-5). The employee was given continued work restrictions on her work activities. (C-7, p. 4).
12. The employee underwent physical therapy, beginning in May of 2021. (C-9). The physical therapist noted stiffness/weakness in the employee's left knee, leading to limitations with walking and moving. (C-9, p. 1). Generally, while the employee received some temporary relief, her left knee condition did not improve. (T. 46-47, C-8, p. 5).
13. In June of 2021, the employee's anti-inflammatory medication was changed from diclofenac to meloxicam. (C-8, pp. 3,5). In addition, a cortisone injection was administered. (C-8, p. 2). However, neither the medication change nor the injection helped the employee's left knee condition. (C-8, p. 5).
14. By July 12, 2021, Dr. Moore noted the employee indicated physical therapy was aggravating the employee's left knee condition. (C-8, p. 5). The employee indicated medications and the cortisone injections did not help with the employee's left knee pain. Id. Dr. Moore wrote, "Given the severe underlying DJD and her BMI, we are struggling to get her back to preinjury level of function." Id. Dr. Moore indicated the only viable treatment option for the employee's left knee condition was total knee replacement surgery. Id. As a

- final recommendation, Dr. Moore recommended Visco supplementation injections. (C-8, p. 5).
15. In July and August of 2021, the employee underwent the recommended Visco supplementation injections. (C-8, pp. 9, 13, 20).
  16. On September 1, 2021, Dr. Moore indicated the employee's left knee condition had not improved with the injections. (C-8, pp. 19-20). Dr. Moore wrote, "As I noted previously, she is not going to return to her preinjury level of function without a TKA (total knee replacement)." (C-8, p. 20).
  17. On September 3, 2021, the employee underwent an IME with Dr. Gary Davis, III. (D-1). After evaluating the employee, Dr. Davis indicated the employee's left knee condition was due to a pre-existing degenerative condition. Id.
  18. On October 8, 2021, Dr. Moore noted the employee's current left knee condition had become worse. (C-8, p. 23). Dr. Moore indicated total knee replacement surgery was appropriate, subject to weight loss by the employee. (C-8, pp. 24-25).
  19. On November 1, 2021, Dr. Moore indicated the employee's left knee symptoms were worsening which affected the employee's daily living. (C-8, p. 30). Dr. Moore indicated his left knee replacement surgery request was not approved by the insurer. Id. As such, Dr. Moore recommended an FCE. Id. Subsequently, the employer/insurer did not either authorize or controvert the recommended surgery and FCE. See Board Rule 61(b)(4); Board Rule 205.
  20. On November 29, 2021, Dr. Moore again indicated the employee's left knee symptoms were worsening. (C-8, p. 34). Dr. Moore indicated, "[s]he is having trouble doing her daily activities, including household chores to the point where she has to sit down to wash dishes." Dr. Moore continued to recommend work restrictions. (C-8, p. 37).
  21. On January 3, 2022, the employee returned to Dr. Moore. (C-8, pp. 39, 44). Dr. Moore wrote, "At this point, she has significant DJD that was aggravated by the injury and has failed to return to previous level of function despite extensive conservative treatment. If degenerative treatment is not approved through Workers' Compensation, we will release her to regular duty and place her at MMI from this injury, obviously she will have significant limitations due to her degenerative change." Id.
  22. Counsel for the employer/insurer submitted a questionnaire to Dr. Moore for consideration. On January 6, 2022, Dr. Moore answered some of the questions on the questionnaire. On the first page in question 1, Dr. Moore indicated the employee had a pre-existing left knee condition. However, Dr. Moore indicated the employee aggravated her left knee condition in her March 30, 2021

accident. In addition, Dr. Moore answered “no” to whether the employee’s current left knee condition had returned to baseline. It appears (hard to read) Dr. Moore wrote, “DJD obviously preexisted work injury, has not returned to baseline despite appropriate conservative care.” (C-10 p. 2). In addition, in question 3, Dr. Moore indicated the employee was not malingering, exaggerating, or putting forth poor effort. (C-10, p. 3). However, in contrast to the answers above, in questions 2, 5, & 6, Dr. Moore indicated the employee did not have work restrictions. (C-10, pp. 2, 3, 4).

23. Based upon Dr. Moore’s answers in questions 2, 5 & 6 as noted above, the employer/insurer took the position that the employee had been released to full duty work. As such, on January 26, 2022, counsel for the employer/insurer filed a Form WC-2 with the Board giving notice of their intent to unilaterally suspend payment of TTD benefits to the employee on February 5, 2022. (C-10, pp. 1-7, D-7, pp. 6-13).
24. On February 5, 2022, the employer/insurer unilaterally suspended payment of TTD benefits to the employee. (C-10, pp. 1-7, D-7, pp. 6-13).
25. While the employee’s TTD benefits were suspended, the employee found a temporary job (through her fiancée) at a small convenience store—Quick Food Mart as a cashier. (T. 55-56, 61, 88-89, 93-94, D-9, D-11, p. 1). The owner needed temporary assistance in the evenings (for four hours) because his wife was off for a short period of time. The employee testified she earned \$180.00 in cash for less than 8 days of work.
26. On March 21, 2022, Dr. Moore answered another questionnaire. (D-5). In this questionnaire, Dr. Moore indicated the employee was a candidate for knee replacement surgery prior to her accident.
27. On March 22, 2022, I issued an interlocutory order, reinstating the employee’s TTD benefits. (C-12, pp. 13-14). Even though the employer/insurer unilaterally suspended the employee’s TTD benefits, the employer/insurer requested a continuance of the March 23, 2022 hearing. For this continuance, I issued the interlocutory order.
28. Counsel for the employer/insurer asserts the employee has undergone a change in condition for the better. Specifically, the employer/insurer argues the employee’s left knee injury is not the cause of her current disability.
29. In response, counsel for the employee asserts the employee has not undergone a change in condition for the better. Instead, counsel for the employee asserts since her accident on March 30, 2021, the employee has

been severely limited in her ability to work and is in need of additional medical treatment for her work-related left knee injury.

30. In construing the Workers' Compensation Act, I am mindful that "The Workers' Compensation Act constitutes a complete code of laws upon the subject and the recoverability of workers' compensation benefits is strictly a matter of statutory construction because there is no common law right to such benefits." Mickens v. Western Probation Detention Center, 244 Ga. App. 268, 534 S.E.2d 927 (2000) (citing Abernathy v. City of Albany, 269 Ga. 88, 495 S.E.2d 13 (1998)). In construing a statute, a primary rule is that the courts must try to ascertain the purpose and intent of the legislature and then try to construe the law to implement that intent. Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981). Finally, "[B]ecause the Workers' Compensation Act is in derogation of common law, its provisions must be strictly construed." Reid v. Georgia Building Authority, 283 Ga. App. 413, 641 S.E.2d 642 (2007); MARTA v. Bridges, 276 Ga. App. 220, 623 S.E.2d 1 (2005).
31. In this claim, on March 30, 2021, while working for the employer, the employee clearly and overwhelmingly suffered an injury, or an aggravation of a pre-existing condition, while working for the employer.
32. "Injury" under the Workers' Compensation Act means only injury by accident arising out of and in the course of employment. See O.C.G.A. §34-9-1(4). However, an employee need not be in perfect health when working for an employer. Every employer takes employees as they are. As such, if an employee has a pre-existing condition, work may "aggravate" a pre-existing condition. See, e.g., Colonial Stores, Inc. v. Hambrick, 176 Ga. App. 544, 546-547, 336 S.E.2d 617, (1985) (An employee need not be in perfect health as the employer takes the employee as it finds her—an aggravation of pre-existing condition is compensable); Brown Transport Corporation v. Jenkins, 129 Ga. App. 457, 199 S.E.2d 910(1973); Thomas v. Ford Motor Company, 123 Ga. App. 512, 181 S.E.2d 874 (1971); Davis v. Bibb Mfg. Co., 75 Ga. App. 515, 43 S.E.2d 780 (1947). An aggravation of a pre-existing condition is considered a work-related injury. Id.; O.C.G.A §34-9-1(4); Chevrolet-Pontiac-Canada Group v. Millar, 182 Ga. App. 889, 357 S.E.2d 598 (1987).
33. When an employer/insurer voluntarily accepts a claim as compensable by paying weekly TTD benefits and providing medical treatment to the employee, the employer/insurer may assert a change in condition for the better. A "change in condition" means "a change in wage-earning capacity, physical condition, or status of an employee, which change must have occurred after the date on which the wage-earning capacity, physical condition, or status of the employee or other beneficiary was last established by award or otherwise." O.C.G.A.

- §34-9-104 (a); O.C.G.A. §34-9-221(h); Atlanta Hilton & Towers v. Gaither, 210 Ga. App. 343, 436 S.E.2d 71 (1993). See also Aldrich v. City of Lumber City, 273 Ga. 461, 542 S.E.2d 102 (2001).
34. In order to show a change in condition for the better in a compensable claim, the employer/insurer is required to show: (1) a physical change for the better, (2) that a change for the better enabled the employee to return to work, and (3) that work is available in order to decrease or terminate the employee's loss of income. See ABB Risk Management Service/Georgia Kaolin v. Lord, 254 Ga. App. 88, 561 S.E.2d 225 (2002); WAGA-TV v. Yang, 256 Ga. App. 224, 568 S.E.2d 58 (2002); Smith v. Brown Steel & Trust Fund, 232 Ga. App. 698, 699, 503 S.E.2d 592 (1998).
  35. When an employer/insurer asserts a change of condition for the better, it is the *employer's burden* to justify that action. See Vulcan Materials Company v. Pritchett, 227 Ga. App. 530, 489 S.E.2d 558 (1997). (Emphasis added).
  36. In order for an employer/insurer to meet this burden, the employer/insurer must show that the employee is able to return to work and that suitable work is available, Freeman v. Continental Baking Company, 212 Ga. App. 855, 443 S.E.2d 520 (1994); Peterson/Puritan, Inc. v. Day, 157 Ga. App. 827, 278 S.E.2d 674 (1981); O.C.G.A. §34-9-240; or, that the employee's injury is so improved that no disability remains which prevents the employee from working without restrictions. See Pierce v. AAA Cabinet Company, 173 Ga. App. 463, 326 S.E.2d 575 (1985); Williams Brothers Lumber Company v. Magee, 162 Ga. App. 865, 292 S.E.2d 477 (1982); McDonald v. Townsend, 175 Ga. App. 811, 334 S.E.2d 723 (1985).
  37. In workers' compensation claims, although all medical opinions must be considered, acceptance of an opinion is not required. See Liberty Mutual Ins. Co. v. Nobles, 147 Ga. App. 81 (1978). Further, the weight and credit to be given to expert testimony is a question exclusively for decision by the fact-finder, making the opinions of expert witnesses advisory and binding the fact-finder only to the extent to which credence is given to the opinion. See Department of Revenue v. Graham, 102 Ga. App. 756, 759; 117 S.E.2d 902 (1960) (internal citations omitted). Thus, the Board may accept the testimony of one expert over the testimony of another. Further, the rejection of an expert medical opinion is within the authority of the Board, as the Board is not absolutely bound to accept such expert opinions, even when uncontroverted. See Fulton County Board of Education v. Taylor, 262 Ga. App. 512, 514-515, 586 S.E.2d 51 (2003). Therefore, the Board is free to accept the testimony of one doctor over that of another or reject an expert medical opinion outright.

38. Counsel for the employer/insurer argues that the employee's left knee condition is no longer causing the employee's disability. See, e.g., Ocmulgee EMC v. McDuffie, 302 Ga. 640, 806 S.E.2d 546 (2017); Worthington Industries v. Sanks, 228 Ga. App. 782, 492 S.E.2d 753 (1997); Hopper v. Continental Insurance Company, 121 Ga. App. 850, 176 S.E.2d 109 (1970).
39. For this position, the employer/insurer relies upon a one-time evaluation by Dr. Gary Davis. (D-1). In addition, the employer/insurer relies upon the employee's medical treatment as shown in her records prior to her March 30, 2021 accident revealing a pre-existing condition. (D-4, D-6, D-15). I have carefully considered this evidence, along with record as a whole. After carefully considering the record as a whole, I find the employer/insurer has not proven by a preponderance of competent and credible evidence that the employee's current left knee condition, or disability, is no longer related to her March 30, 2021 work-related accident/injury.
40. In this claim, the employee has a number of co-morbidities—age, weight, pre-existing arthritis, etc. However, despite these conditions, I find the employee was able to work consistently for the employer for approximately 48 hours per week for four years. (T. 25-26, C-3, pp. 1-15, C-11, p. 2). In her work for the employer, the employee was required to undergo a yearly physical. (T. 23). Nothing, as shown in the record in her yearly physicals, reveals any limitations on her ability to work for the employer. In fact, the employee was able to perform all her job duties prior to her accident. (T. 26, 113, 115-116, C-3, pp. 1-15, C-11, p. 2). Finally, according to the employer, the employee did a good job. (T. 118).
41. In considering the evidence, I find the employee was able to work full duty prior to her work accident/injury. In addition, I find there is little, if any, credible evidence supporting the employee was limited in her ability to work by any pre-existing condition. In fact, as noted above, the employee worked forty-eight hours a week in a physically strenuous job. (T. 20-23, 33-36, C-3, pp. 1-15, C-11, p. 2). Since the employee was not affected by any pre-existing knee condition prior to her work-related injury, I find it more likely than not that the employee's work-related accident/injury created her current symptomatic condition. See O.C.G.A §34-9-1(4). I find the medical evidence clearly reveals a worsening left knee condition after her March 30, 2021 accident. (C-4, C-5, C-6, C-7, C-8, pp. 20, 30, 34, 39, C-9). I find the employee now has essentially permanent light duty restrictions from her work-related injury which now limits her physical ability to work. (C-8, p. 38). Because the evidence shows that the employee's current left knee condition was injured, or aggravated, in her work-related accident, and this condition has not resolved to its pre-injury state, I find the employee has not undergone a change in condition for the better. I find the cause of the employee's current disability is her work-related left knee injury.

42. I have also carefully considered the opinion of Dr. Davis, in relation to the record as a whole. After doing so, I discount the opinion of Dr. Davis. (D-1). Dr. Davis does indicate the employee's work accident was an "acute exacerbation." (D-1, p. 2). However, Dr. Davis indicates the "largest majority" and the "primary generator" of the employee's pain is due to degenerative joint disease and the employee's weight. While this may be true based upon the employee's co-morbidities, I find Dr. Davis does not sufficiently address the contribution of the employee's March 30, 2021 accident/injury to her current condition. In this case, based upon the clear chronology or timeline of this case as outlined above, I find the record clearly shows the employee's work accident was the primary precipitating cause of her current condition and need for knee replacement surgery. As previously stated, every employer takes employees as they are (i.e., meaning with pre-existing conditions), and an aggravation of a pre-existing condition is a compensable work-related injury.
43. The employer/insurer submitted the testimony of two of the employee's supervisors. They testified that they observed the employee walk with a limp prior to her accident. (T. 107, 118-119, 123). However, I find neither witness identified which leg they observed the employee limping on. *Id.* To this extent, the employee testified her right knee was worse prior to her accident. (T. 26). Even though the employee sought treatment for pain in her lower extremities prior to her accident, I find the employee's testimony regarding her right knee being worse than her left is supported by her medical records. (D-4, p. 103, D-15, p. 1).
44. I have reviewed and considered the evidence regarding the employee's limited work at the convenience store. (T. 55-56, 61, 88-89, 92-101, D-9, D-11, p. 1). At the time, I find the employee was not receiving any weekly TTD benefits as the employer/insurer took the position, based upon their suspension, that the employee was not entitled to any workers' compensation benefits. Since the employee was not receiving any weekly benefits and had to pay bills, I find it reasonable for the employee to perform this limited work. At this time, I find the employee was not totally disabled from working but had light duty restrictions. I find the employee's work was light in nature and limited in duration. I find this work was within the employee's restrictions. (D-9). Because I directed the employer/insurer to commence TTD benefits to the employee (after the fact), I find the employer/insurer is entitled to a credit.
45. Since the employee's work-related injuries have not resolved to their pre-injury state, I find the employer/insurer is responsible for reasonable and necessary medical treatment for the employee's work-related injuries that grants relief, effects a cure, or restores the employee to suitable employment. See O.C.G.A.

§ 34-9-200(a). I find this medical treatment includes knee replacement surgery as recommended by Dr. Moore.

46. Both attorneys request assessed attorney fees.
47. If weekly benefits are not paid when due, the employee is entitled to 15% late-payment penalties on accrued benefits due. See O.C.G.A. §34-9-221(b) & (e). In addition, if any provision of O.C.G.A. § 34-9-221 is violated without reasonable grounds and the employee engages the services of an attorney to enforce his right, assessed attorney fees may be awarded. See O.C.G.A. §34-9-108(b)(2). Further, assessed attorney fees may be awarded upon the determination that a proceeding has been prosecuted or defended in whole or in part without reasonable grounds. See O.C.G.A. § 34-9-108(b)(1). Finally, litigation expenses may be awarded. See O.C.G.A. §34-9-108(b)(4). Whether unreasonable grounds exist for the imposition of assessed attorney fees is a question of fact to be determined by the Board. See Printpack, Inc. v. Crocker, 260 Ga. App. 67, 579 S.E.2d 225 (2003); Mt. Vernon Mills, Inc. v. Gunn, 197 Ga. App. 109, 397 S.E.2d 603 (1990).
48. With regards to the employer/insurer's request for assessed attorney fees and civil penalties, I find the employee has been reasonable in this proceeding. I find this is a compensable claim and the employee has reasonably requested workers' compensation benefits. As such, I find the employer/insurer is not entitled to any assessed attorney fees or the imposition of any civil penalties.
49. With regards to the employee's request for assessed attorney fees, I find the employer/insurer has been unreasonable in part in this claim. I find the employer/insurer's assertion that the employee's current left knee condition is not related to her work-related accident to generally be reasonable based upon the opinion of Dr. Davis. (D-1). To this extent, I find the employer/insurer's request for a hearing to determine the causal connection between the employee's current left knee condition and her work-related accident to be reasonable. (D-7, pp. 4-5).
50. However, while the request was pending and discovery was being conducted, I find the employer/insurer unilaterally suspended the employee's TTD benefits in February of 2022. (C-10, D-7). I find the employer/insurer's unilateral suspension of benefits to be unreasonable.
51. In the employer/insurer's unilateral suspension of benefits, the employer/insurer attached Dr. Moore's answers to a questionnaire and Dr. Moore's November 29, 2021 medical note. The employer/insurer's justification

for the suspension of benefits was Dr. Moore checked a box “no” with regards to the employee’s work restrictions. (C-10, p. 2). However, in this same questionnaire, I find Dr. Moore stated the employee aggravated a pre-existing condition and her condition had not returned to baseline. (C-10, p. 2). Further, in the questionnaire, Dr. Moore referred to his January 3, 2022 note which Dr. Moore again stated the employee aggravated her pre-existing condition and she had not returned to baseline despite extensive conservative treatment. (*Id.*, C-8, p. 39). In both the questionnaire and the office note, I find Dr. Moore was clear that the employee had “aggravated” her pre-existing condition and she had not returned to baseline. In light of these clear statements regarding the employee’s work-related condition, I find the employer/insurer was unreasonable in unilaterally suspending the employee’s TTD benefits rather than waiting to present all their evidence at a hearing. Further, after unilaterally suspending the employee’s benefits, the employer/insurer were not ready to defend their actions on February 23, 2022 and March 23, 2022, the prior dates of hearing. I find this delay, in light of their unilateral action, to be unreasonable as well. (C-12, pp. 10-14).

52. Counsel for the employee requests \$7,500.00 in assessed attorney fees. (T. 125-130, C-12). Because the employer/insurer has been in part unreasonable, I find the fair and reasonable amount to be assessed is \$3,750.00. See Heritage Healthcare of Toccoa v. Ayers, 323 Ga App. 172, 746 S.E.2d 744, (2013); Atlas Automotive v. Wilson, 225 Ga. App. 631, 484 S.E.2d 669 (1997).
53. Finally, at this time, I find the employee is entitled to workers’ compensation benefits. As such, I find the employer/insurer is not entitled to reimbursement under O.C.G.A. §34-9-245.

### **AWARD**

1. Based upon the foregoing findings of fact and conclusions of law, the employer/insurer’s request to suspend payment of workers’ compensation benefits is denied.

2. Since this is a compensable claim, the employer/insurer is responsible to provide and pay for reasonable and necessary medical treatment with Dr. Moore, including but not limited to left knee replacement surgery, for the employee's work-related injuries that grants relief, effects a cure, or restores the employee to suitable employment. See O.C.G.A. § 34-9-200(a). Dr. Moore, as the employee's authorized treating physician, may refer the employee for other specialized medical services and treatment as required by the nature of the employee's injury, without prior authorization of the Board. See O.C.G.A. §34-9-201(b)(1). If a dispute arises as to whether the medical treatment the employee is or is not receiving is reasonable, necessary, or related to the employee's injuries, either party may request a hearing to resolve a dispute.
3. The employer/insurer's request for civil penalties and reimbursement is denied. The employer/insurer may take a credit for any TTD benefits paid to the employee against any money earned by the employee in March of 2022.
4. The employer/insurer is directed to pay counsel for the employee \$3,750.00 in assessed attorney fees.
5. Counsel for the employer/insurer's request for assessed attorney fees and the imposition of civil penalties is denied.

**IT IS SO ORDERED**, this the 15th day of July, 2022.

**STATE BOARD OF WORKERS' COMPENSATION**

**This order has been electronically signed and approved**

***/s/ DAVID K. IMAHARA***

---

**ADMINISTRATIVE LAW JUDGE**