

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

IN RE: FRANK A. GAN

DOCKET NO. 24 19721, 24 19722

Claim No: SY-67172

DECISION AND ORDER

In May 2022, Frank Gan sustained an industrial injury to his left knee while working for MacDonald-Miller Facility Solutions, LLC (MacDonald-Miller), the self-insured employer. In July 2023, Mr. Gan underwent a partial knee replacement surgery. He had no complications and his recovery progressed normally. At his six-week post-operative appointment, his attending provider released him to light-duty work effective one week later on September 14, 2023. Unfortunately, only three days before Mr. Gan returned to work, his dog knocked into him at home, causing him to fall down an entire staircase. The accident increased his left knee disability, impeded his surgical recovery, and prevented his otherwise imminent return to work. On March 8, 2024, the Department of Labor and Industries issued an order denying Mr. Gan's request for an unreasonable delay penalty under RCW 51.48.017 for the period of September 14, 2023, through November 30, 2023. Mr. Gan appealed the order (Docket No. 24 19721) and requested the Board reverse it and order the Department to impose the penalty. On March 14, 2024, the Department issued an order directing MacDonald-Miller to pay Mr. Gan time-loss compensation from September 13, 2023, through the date of the order, and thereafter as required by law. MacDonald-Miller appealed the order (Docket No. 24 19722) and requested the Board find that as of September 13, 2023, Mr. Gan was not temporarily totally disabled within the meaning of RCW 51.32.090. Mr. Gan contended his fall was the result of his claim-related knee issues and caused by an incident that occurred within the normal course of daily activities, entitling him to time-loss compensation for the contested period.

After a hearing, our industrial appeals judge affirmed the order requiring MacDonald-Miller to pay time-loss compensation and dismissed the appeal from the order denying an unreasonable delay penalty for failure to present a prima facie case. MacDonald-Miller filed a Petition for Review requesting the Board find that the fall was a supervening, independent event and reverse the payment order. Mr. Gan filed a response to MacDonald-Miller's Petition for Review, but his response did not address or contest dismissal of his appeal regarding the unreasonable delay penalty.

1 After careful review of the record, we granted review to find that the circumstances
2 surrounding Mr. Gan's fall constituted a supervening and independent event, unrelated to his
3 industrial injury. As a result, he is not entitled to time-loss compensation as of
4 September 14, 2023, when his attending provider released him to light-duty work. We also
5 granted review to affirm the order denying an unreasonable delay penalty, rather than
6 dismiss the appeal, because MacDonald-Miller did not move for dismissal. The Department
7 order dated March 8, 2024, is **AFFIRMED**. The Department order dated March 14, 2024, is
8 **REVERSED AND REMANDED** with instruction to deny time-loss compensation for the
9 period of September 14, 2023, through March 14, 2024.

14 DISCUSSION

15 MacDonald-Miller is a commercial mechanical contracting company that performs
16 work for the U.S. Coast Guard and Navy. It is a union shop with collective bargaining
17 agreements (CBAs) for a variety of trades. Frank Gan, a Local Union 66 sheet metal worker,
18 began working for MacDonald-Miller in 2021. On May 4, 2022, Mr. Gan injured his left knee
19 going down a steep set of stairs while working on a Navy vessel. A subsequent left knee
20 MRI showed medial and lateral meniscus tears. In September 2022, Mr. Gan's attending
21 provider, Tyler Nathe, M.D., performed a left knee arthroscopy and partial medial
22 meniscectomy. After recovering from surgery, Mr. Gan returned to MacDonald-Miller in a
23 light-duty position.

24 In December 2022, MacDonald-Miller fired Mr. Gan from his modified-duty position
25 after being directed to do so by the union due to delinquent dues. Casey O'Hearn, a manager
26 at MacDonald-Miller, explained that Mr. Gan's CBA required immediate termination for any
27 employees not current with their union dues. Any MacDonald-Miller employee in this
28 situation would be terminated. Once back in good standing, they return to the union hall
29 hiring list. MacDonald-Miller had modified-duty positions available, which would have been
30 offered to Mr. Gan if he had not been terminated for his delinquent dues. His firing was
31 therefore akin to a disciplinary termination, severing MacDonald-Miller's duty to offer Mr. Gan
32 any further work, including any modified-duty positions.¹ MacDonald-Miller remained
33 responsible for total disability benefits resulting from Mr. Gan's claim-related disability.²

34 ¹ *In re Chad Thomas*, BIIA Dec., 00 10091 (2001)

35 ² *In re Jennifer Soesbe*, BIIA Dec., 02 19030 (2003).

1 In early 2023, Mr. Gan found work with another employer but continued to struggle
2 with his left knee symptoms. Additional imaging demonstrated a collapse of the medial
3 femoral condyle. To address this condition, Dr. Nathe performed a claim-related partial knee
4 replacement surgery on July 25, 2023, and took Mr. Gan off work entirely for the following
5 six weeks. The surgery had no complications and Mr. Gan's recovery was normal. Initially
6 after surgery, Mr. Gan had no strength in his left leg and was unable to perform normal daily
7 functions. By the 10-day post-operative appointment, Mr. Gan had started physical therapy
8 and could bend his left knee about 90 degrees.
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13 At the six-week post-operative appointment on September 7, 2023, Dr. Nathe noted
14 that Mr. Gan continued to do well and was progressing as expected. He was engaging in
15 physical therapy. His knee range of motion was essentially normal with full extension and
16 135 degrees of flexion. Although Mr. Gan noted left leg weakness and difficulty going down
17 stairs, he showed fairly good quad strength and function, and he could climb stairs. Dr. Nathe
18 approved Mr. Gan to start activities such as light swimming, golfing, and cycling, and
19 increase the activities as tolerated. Dr. Nathe also completed an activity prescription form
20 (APF) that released Mr. Gan to light-duty work a week from the appointment, effective
21 September 14. The APF restricted walking and standing to one to three hours a day, limited
22 stairs to seldom, and restricted carrying, bending, stooping, squatting, and kneeling.
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28 On September 11, Mr. Gan had an unfortunate fall down an entire staircase at home.
29 He testified that as he stood at the top of the stairs, his dog "basically knocked my legs out
30 from under me, and I rolled all the way down the stairs and compressed when I hit the wall."³
31 The hard impact with the wall pushed Mr. Gan's legs into his chest, forcing his left knee
32 beyond his range of motion. Mr. Gan's resulting left knee pain prevented him from returning
33 to work imminently as planned. He sought medical care with Dr. Nathe's physician's
34 assistant, whose chart note indicated increased symptoms after a fall down the stairs caused
35 by being tripped by his dog. No modifications were made at the time to the September 7
36 APF, leaving in place Mr. Gan's release to work on September 14 with restrictions.
37 On October 5, another physician's assistant treated Mr. Gan and restricted him from all work
38 due to his worsened condition.
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³ 12/5/24 Tr. at 47.

1 On November 1, Mr. Gan treated with Dr. Nathe. Mr. Gan's symptoms were
2 significantly worse than before his fall and before the partial knee replacement surgery.
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4 Mr. Gan underwent new x-rays and another MRI. He required additional physical therapy
5 and pain medication. Dr. Nathe continued to keep Mr. Gan off work entirely until
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7 January 10, 2024, when he was once again released back to modified duty.

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9 MacDonald-Miller contends that Mr. Gan was not a temporarily totally disabled worker
10 as a result of his fall down the stairs because it constituted a supervening, independent event.
11 We agree. New injuries are compensable when the worker's subsequent condition occurs
12 as a result of the original injury.⁴ The causal analysis therefore focuses on whether the
13 subsequent injury or condition would have occurred "but for" the industrial injury, or whether
14 it resulted from a subsequent, supervening event independent of the original injury. In
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16 Mr. Gan's case, his fall was solely caused by his dog knocking into him. He had no surgical
17 complications and had been recovering as expected up until his fall, with good quad strength
18 by that time. Neither Dr. Nathe nor the independent medical examiner,
19 Daniel Hanesworth, M.D., testified that Mr. Gan was experiencing weakness or instability
20 when the fall occurred or that his knee condition caused his fall. The record demonstrates
21 that Mr. Gan would have had the same fall down the stairs after his dog knocked into him
22 regardless of his industrial injury and resulting knee issues.

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24 Additionally, Mr. Gan's increased disability was the result of landing hard against the
25 wall after tumbling down an entire staircase. Trauma that is similar to what occurs with
26 normal daily activities does not constitute a supervening event breaking the causal chain.⁵
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28 Mr. Gan was engaged in a normal daily activity standing in his home, and being bumped or
29 tripped by a family pet is not unusual in day-to-day life. However, the trauma sustained in
30 the fall was more significant than what occurs during normal daily activities. The impact
31 against the wall at the bottom of the stairs pushed Mr. Gan's knee past a normal range of
32 motion, constituting a supervening, independent event. This differs from the claimant in
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34 *In re Mary Wardlaw*, whose claim-related surgical complications made her more susceptible
35 to injury from common bumps or pushes that can occur during general daily activities. The
36 impact with the wall caused Mr. Gan increased impairment unrelated to his industrial injury
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46 ⁴ *In re Robert Tracy*, BIIA Dec., 88 1695 (1990).

47 ⁵ *In re Mary Wardlaw*, BIIA Dec., 88 2105 (1990).

1 or recent surgery. The Department incorrectly determined Mr. Gan was temporarily totally
2 disabled for the contested time period because his inability to return to work on
3 September 14, 2023, was the result of a supervening, independent event.

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5 The Department order denying an unreasonable delay penalty is affirmed because
6 Mr. Gan did not present sufficient evidence that MacDonald-Miller unreasonably delayed his
7 time-loss compensation payments. Our judge incorrectly dismissed the appeal for a failure
8 to present a prima facie case because MacDonald-Miller did not make a formal motion for
9 such relief. CR 41(b)(3) allows a defendant to move for dismissal after the plaintiff rests; it
10 does not authorize a judge to do so on their own motion. In this appeal, Mr. Gan's evidence
11 showing entitlement to time-loss compensation for the contested period constituted some
12 evidence to support his requested relief. However, Mr. Gan failed to show that
13 MacDonald-Miller did not have a genuine doubt as to its responsibility to pay time-loss
14 compensation after his fall down the stairs, as is required.⁶ The Department correctly denied
15 Mr. Gan's request for an unreasonable delay penalty.
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22 **DECISION**

23 In Docket No. 24 19721, the claimant, Frank A. Gan, filed an appeal with the Board of
24 Industrial Insurance Appeals on May 7, 2024, from an order of the Department of Labor and
25 Industries dated March 8, 2024. In this order, the Department denied Mr. Gan's request for
26 an unreasonable delay penalty against the self-insured employer. This order is correct and
27 is affirmed.
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31 In Docket No. 24 19722, the self-insured employer, MacDonald-Miller Facility
32 Solutions, LLC, filed an appeal with the Board of Industrial Insurance Appeals on May 7,
33 2024, from an order of the Department of Labor and Industries dated March 14, 2024. In this
34 order, the Department determined MacDonald-Miller was responsible for paying Mr. Gan
35 time-loss compensation from September 13, 2023, through the date of the order and
36 thereafter as required by law. This order is incorrect and is reversed. This matter is
37 remanded to the Department to issue an order denying the self-insured employer's
38 responsibility for time-loss compensation from September 14, 2023, through
39 March 14, 2024.
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47 ⁶ *In re Frank Madrid*, BIIA Dec., 86 0224-A (1987).

FINDINGS OF FACT

1. On July 1, 2024, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. On May 4, 2022, Frank Gan sustained an industrial injury to his left knee while descending a staircase on a Navy vessel while working for MacDonald-Miller Facility Solutions, LLC. Mr. Gan felt a pop in his knee and suffered tears in his medial and lateral meniscus.
3. Mr. Gan underwent a left knee arthroscopy and partial medial meniscectomy, then returned to work in a light-duty position.
4. In December 2022, MacDonald-Miller Facility Solutions, LLC, fired Mr. Gan at the direction of the union because he was delinquent in his dues. The firing is akin to a for-cause termination.
5. On July 25, 2023, Mr. Gan underwent a partial knee replacement surgery to treat the collapse of his medial femoral condyle, a claim-related condition. He was temporarily totally disabled during the initial six weeks of his recovery.
6. On September 7, 2023, Mr. Gan's attending provider released him to light-duty work effective September 14, 2023.
7. On September 11, 2023, Mr. Gan fell down a set of stairs at home after being knocked or tripped by his dog, impeding his recovery and preventing him from returning to work as planned.
8. The incident on September 11, 2023, was a supervening event unrelated to Mr. Gan's industrial injury or any claim-related condition.
9. Mr. Gan was not temporarily totally disabled as of September 14, 2023.
10. Mr. Gan did not present sufficient evidence to show that the self-insured employer unreasonably delayed payment of his benefits for the period of September 14, 2023, through November 30, 2023.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.
2. Mr. Gan was not a temporarily totally disabled worker within the meaning of RCW 51.32.090 from September 14, 2023, through March 14, 2024.

3. The self-insured employer was not required to offer Mr. Gan a modified-duty position after his attending provider released him to light duty effective September 14, 2023.
4. The self-insured employer did not unreasonably delay or refuse to pay time-loss compensation to Mr. Gan after those benefits became due, as contemplated by RCW 51.48.017.
5. The Department order dated March 8, 2024, is correct and is affirmed.
6. The Department order dated March 14, 2024, is incorrect and is reversed. This matter is remanded to the Department to find Mr. Gan was not entitled to time-loss compensation from September 14, 2023, through March 14, 2024.

Dated: July 10, 2025.

BOARD OF INDUSTRIAL INSURANCE APPEALS



HOLLY A. KESSLER, Chairperson



ROBERT A. BATTLES, Member

**Addendum to Decision and Order
In re Frank A. Gan
Docket Nos. 24 19721 & 24 19722
Claim No. SY-67172**

Appearances

Claimant, Frank A. Gan, by Emery Reddy, PLLC, per Caleb Lewis, Paralegal, and Patrick B. Reddy

Self-Insured Employer, MacDonald-Miller Facility Solutions, LLC, by Gress, Clark, Young & Schoepper, per James L. Gress

Department of Labor and Industries, by Office of the Attorney General, per Rebecca Stanger

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order issued on March 19, 2025, in which the industrial appeals judge dismissed the appeal in Docket No. 24 19721 and affirmed the Department order dated March 14, 2024. Mr. Gan filed a response to the Petition for Review.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.