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CONCLUSION

We conclude that the district court abused its discretion in imposing an excessively lenient sentences on Parminter. We reverse, and remand with directions to resentence Parminter to consecutive terms of 5 to 5 years. The district court must also revoke Parminter's license according to the applicable statutes.[20] Finally, the court must give Parminter credit for the time he has already served.[21] We leave it to the district court to determine the credit to Parminter for the time served.

REVERSED AND REMANDED WITH DIRECTIONS.

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[20] See § 60-6,197.03(6) and (7).

[21] See Neb. Rev. Stat. § 83-1,106 (Reissue 2008). See, also, Neb. Rev. Stat. § 29-2324 (Reissue 2008).

WILLIAM SELLERS, APPELLANT, V. REEFER SYSTEMS, INC., APPELLEE.

811 N.W.2d 293

Filed April 26, 2012. No. S-11-909.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the Workers' Compensation Court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.
2. **Workers' Compensation: Stipulations.** Before an order for future medical benefits may be entered, there should be a stipulation of the parties or evidence in the record to support a determination that future medical treatment will be reasonably necessary to relieve the injured worker from the effects of the work-related injury or occupational disease.

Appeal from the Workers' Compensation Court. Affirmed.

Joel D. Nelson, of Keating, O'Gara, Nedved & Peter, P.C., L.L.O., for appellant.

Sonya K. Koperski, of Leininger, Smith, Johnson, Baack, Placzek & Allen, for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

Appellant, William Sellers, injured his left knee in the course of his employment with Reefer Systems, Inc., and sought workers' compensation benefits. The Nebraska Workers' Compensation Court determined that Sellers was entitled to future medical care for the knee injury. A review panel of that court affirmed the award, but modified it "to exclude knee replacement surgery at present as the evidence as of the date of trial does not support such finding." The issue presented in this appeal is whether the modification limited Sellers' ability to claim workers' compensation benefits relating to any future knee replacement surgery. We conclude that it did not and affirm the judgment of the compensation court.

BACKGROUND

On December 8, 2007, Sellers injured his left knee within the course and scope of his employment with Reefer Systems. An MRI showed both structural and degenerative damage. Dr. John Hannah operated on Sellers' knee in February 2008, and Sellers thereafter participated in physical therapy. Sellers also was fitted for a brace and had periodic injections for pain. On June 26, Hannah found Sellers had reached maximum medical improvement. And on June 18, 2009, Hannah opined "it is probable . . . Sellers will need left knee treatment in the future as a result of the aggravated degenerative changes including but not limited to doctor visits, imaging studies, injections, and possibly eventually knee replacement."

On February 23, 2011, the Workers' Compensation Court awarded Sellers temporary and permanent benefits for the knee injury. Citing to Hannah's June 18, 2009, opinion, it also found that Sellers was "entitled to future medical care for treatment of the left knee injury."

Reefer Systems appealed to the review panel, arguing the award of future medical care was improper. Specifically, it argued there was no evidence in the record of sufficient specificity to support the award of future medical treatment. The

panel rejected this argument, noting that Hannah's June 18, 2009, statement that future knee treatment was "probable" met the standard that future care was needed to a reasonable degree of medical probability. The panel reasoned, however, that because Hannah had used the word "possibly" with respect to future knee replacement surgery, "there is not sufficient evidence . . . to support an award of left knee replacement at the present time." It therefore modified the trial court's award of future medical care "to exclude knee replacement surgery at present as the evidence as of the date of trial does not support such finding." Sellers filed this timely appeal.

ASSIGNMENT OF ERROR

Sellers assigns that the "review panel erred in modifying the award of future medical care so as to exclude the possibility" of Reefer Systems' "ever being required to pay" for knee replacement surgery.

STANDARD OF REVIEW

[1] A judgment, order, or award of the Workers' Compensation Court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.[1]

ANALYSIS

It is undisputed that Sellers sustained the knee injury in the course and scope of his employment with Reefer Systems. The Nebraska Workers' Compensation Act[2] provides that an "employer is liable for all reasonable . . . services . . . and medicines *as and when needed*, which are required by the nature of the injury and which will relieve pain or promote and

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[1] *Hofferber v. Hastings Utilities*, 282 Neb. 215, 803 N.W.2d 1 (2011); *Snipes v. Sperry Vickers*, 251 Neb. 415, 557 N.W.2d 662 (1997).

[2] See Neb. Rev. Stat. § 48-101 et seq. (Reissue 2010 & Supp. 2011).

hasten the employee's restoration to health and employment."[3] The "obvious purpose" of § 48-120 is to authorize the compensation court "to order, as part of a final award, an employer to pay the costs of the medicines and medical treatment reasonably necessary to relieve the worker from the effects of the injury."[4] The provision exists because "[i]t is an obvious fact of industrial life . . . that an injured worker can reach maximum medical improvement from an injury and yet require periodic medical care to prevent further deterioration in his or her physical condition."[5]

Sellers does not contend that he is presently entitled to benefits for knee replacement surgery. But he argues that by modifying the award concerning future medical care, the review panel improperly and prejudicially limited the award's scope to include only that care which "is certainly or probably necessary at the time of trial,"[6] thereby foreclosing compensability of knee replacement surgery even if it is recommended by his physicians in the future. We do not interpret the modification as having that effect.

[2] Before an order for future medical benefits may be entered, there should be a stipulation of the parties or evidence in the record to support a determination that future medical treatment will be reasonably necessary to relieve the injured worker from the effects of the work-related injury or occupational disease.[7] That requirement was met in this case by the opinion of Sellers' physician that he will probably require future medical care, including future doctor visits and imaging studies, as a result of the injury to his left knee. Our case law establishes that once it has been determined that the need for future care is probable, the employer is liable for any future

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[3] § 48-120(1)(a) (emphasis supplied).

[4] *Foote v. O'Neill Packing*, 262 Neb. 467, 473, 632 N.W.2d 313, 319-20 (2001).

[5] *Id.* at 474, 632 N.W.2d at 320.

[6] Brief for appellant at 10.

[7] *Foote, supra* note 4; *Adams v. Cargill Meat Solutions*, 17 Neb. App. 708, 774 N.W.2d 761 (2009).

medical care shown to be reasonably necessary under § 48-120, even if the necessity for a specific procedure or treatment did not exist at the time of the award.[8]

In *Foote v. O'Neill Packing*,[9] we considered the scope of an award which included "'all reasonable and necessary medical expenses resulting from [the compensable] injuries'" but did not specify what future treatment would be compensable. The employee sought compensation for medical care he received more than 2 years after the last workers' compensation payment had been made pursuant to the award. The compensation court rejected the claim, finding it was barred by the statute of limitations.[10] We reversed, concluding that because future medical benefits were included in the language of the original award, the statute of limitations did not apply. Instead, "[t]he only limitation on medical benefits set forth in § 48-120 is that the treatment be reasonable and that the compensation court has the authority to determine the necessity, character, and sufficiency of the treatment furnished."[11] We noted that the employer "may contest any future claims for medical treatment on the basis that such treatment is unrelated to the original work-related injury or occupational disease, or that the treatment is unnecessary or inapplicable."[12]

That is essentially what occurred in *Rodriguez v. Hirschbach Motor Lines*.[13] The employee sought benefits for gastric bypass surgery, which he contended was medically necessary because his weight precluded him from undergoing the surgery which was necessary to treat his work-related injuries. The compensation court upheld the employer's objection to liability for this treatment, noting that while future medical benefits had been

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[8] See, *Pearson v. Archer-Daniels-Midland Milling Co.*, 282 Neb. 400, 803 N.W.2d 489 (2011); *Rodriguez v. Hirschbach Motor Lines*, 270 Neb. 757, 707 N.W.2d 232 (2005); *Foote, supra* note 4.

[9] *Foote, supra* note 4, 262 Neb. at 469, 632 N.W.2d at 317.

[10] See § 48-137.

[11] *Foote, supra* note 4, 262 Neb. at 474, 632 N.W.2d at 320.

[12] *Id.* at 476, 632 N.W.2d at 321. See, also, § 48-120(6).

[13] *Rodriguez, supra* note 8.

awarded, the record "'at this point'" did not establish that the gastric bypass surgery was necessary to treat the work-related injuries.[14] We concluded that the denial was not clearly erroneous. Implicit in our holding is that if necessity had been established, the gastric bypass surgery would have been compensable notwithstanding the fact that it was not specifically included in the award of future medical expenses.

Our recent decision in *Pearson v. Archer-Daniels-Midland Milling Co.*[15] reinforces the principle that a broadly worded award of future medical treatment may include treatment which becomes reasonably necessary only after entry of the award. The employee sustained a work-related knee injury. Based upon medical evidence that he would require periodic injections of medication to alleviate pain, oral anti-inflammatory medications, and a brace, the compensation court entered an award in 2008 which required the employer to pay for "'future medical care and treatment as may be reasonably necessary as a result of the accident and injuries . . . .'"[16] The employee subsequently underwent knee replacement surgery, for which he sought compensation. The compensation court denied the request, reasoning that the possibility of the surgery was known at the time of trial and that because compensation for the surgery was not explicitly awarded, it was therefore implicitly denied. Based upon this conclusion, the compensation court did not permit the employee to present evidence that the knee replacement surgery was necessitated by the compensable injury.

We reversed, and remanded for a factual determination of whether the knee replacement surgery fell under the provisions of § 48-120. We viewed the evidence at trial as establishing a possibility that the surgery would be necessary in the future, but insufficient to establish at the time of the award that the surgery would meet the test for compensability established by § 48-120(1)(a). But we concluded that this

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[14] *Id.* at 766, 707 N.W.2d at 240.

[15] *Pearson, supra* note 8.

[16] *Id.* at 403, 803 N.W.2d at 492.

fact did not foreclose a showing of compensability in the future, reasoning:

> Given the broad provision for future medical treatment in the original award, and the complete absence of any language in the award denying knee replacement, the original award simply cannot be read as denying [the employee's] knee replacement. This is not to say that the knee replacement is necessarily compensable. Rather, the award should be enforced according to its terms—[the employee] was awarded "[a]ny future medical treatment received . . . which falls under the provisions of § 48-120, and which otherwise satisfies all necessary foundational elements thereto . . . ."[17]

Here, the award recited the evidence regarding what future medical treatment would "probably" be necessary, i.e., doctor visits, imaging studies, and injections. It also recited the evidence that knee replacement surgery would "possibly" be required. It then ordered the employer "to pay plaintiff's future medical care as set forth above." To the extent that the award can be read to require payment for knee replacement surgery, it is erroneous, because the necessity for that surgery had not been established. The review panel addressed this narrow point by modifying the award "to exclude knee replacement surgery *at present* as the evidence *as of the date of trial* does not support such finding." (Emphasis supplied.) The modification is entirely consistent with our opinions in *Foote*, *Rodriguez*, and *Pearson*. It does not foreclose Sellers from establishing at a later date that knee replacement surgery is reasonably necessary to treat his compensable injury and is therefore encompassed under the terms of the award. Nor does it foreclose Reefer Systems from challenging any such future claim. Section 48-120(6) provides both parties with a mechanism for resolving any contested issue on this point, which the compensation court would resolve by exercising its continuing jurisdiction over medical benefits to enforce its award.[18]

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[17] *Id.* at 408, 803 N.W.2d at 495.

[18] See, *Foote, supra* note 4; § 48-120(1).

CONCLUSION

For the reasons discussed, we find no error in the judgment of the compensation court review panel in affirming the award as modified. The judgment is therefore affirmed.

AFFIRMED.