

This is the 1st affidavit
of Don Smith in this case and
was made on June 3, 2017.

No. _____
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Don Smith

Petitioner

And:

Workers' Compensation Appeal Tribunal

Respondent

AFFIDAVIT

I, Don Smith of 9876 Main Street in Vancouver, British Columbia, mechanic, AFFIRM
THAT:

1. I am the petitioner in this matter and I have personal knowledge of the matters I refer to in this affidavit.
2. I worked as a mechanic for ABC Auto Repairs from August of 2000 until May of 2016.
3. My job requires me to frequently kneel on the concrete floor of the store's garage.

My Osteoarthritis of the Knee

4. In or around January 2016, I began experiencing knee pain while kneeling at work. Over the following months I experienced recurring pain in both knees that persisted throughout the day and which made it difficult for me to walk and work.
5. On May 18, 2016, I consulted with my family physician, Dr. Jones. Dr. Jones concluded that I had osteoarthritis in my knees which was irritated by constant kneeling at work. I have attached a true copy of Dr. Jones' report dated May 18, 2016 as Exhibit "A" to this affidavit.

My WCB Claim

6. On June 1, 2016, I filed an application for compensation with the Worker's Compensation Board (the "WCB"). I have attached a true copy of my application for WCB benefits dated June 1, 2016 as Exhibit "B" to this affidavit.
7. On July 2, 2016, an occupational therapist produced a job demands analysis with respect to my employment. The job demands analysis identified kneeling as a potential risk factor for the development of osteoarthritis in the knees and detailed my job demands that would require kneeling. I have attached a true copy of the job demands analysis dated July 2, 2016 as Exhibit "C" to this affidavit.
8. On July 10, 2016, a Board Medical Advisor (the "BMA") reviewed my file and gave an opinion agreeing with the job demands analysis that kneeling was a potential risk factor for arthritis. However, the BMA believed that I did not do the amount of kneeling required to cause the onset of osteoarthritis. The BMA also stated that my arthritis arose earlier than I claimed and that it arose outside of my work at ABC Repair Shop. I have attached a true copy of the BMA's opinion dated July 10, 2016 as Exhibit "D" to this affidavit.

9. On July 30, 2016, the WCB denied my claim for osteoarthritis (the “WCB Decision”). I have attached a true copy of the WCB Decision denying my claim for benefits as Exhibit “E” to this affidavit.
10. On August 14, 2016, I applied to the WCB’s Review Division (the “Review Division”) for a review of the WCB Decision.
11. On November 27, 2016, the Review Division made a decision denying my request for review (the “Review Decision”). The Review Decision found that kneeling is an activity that can aggravate osteoarthritis. However, the Review Decision concluded that the amount of kneeling required by my employment could not cause osteoarthritis. The Review Decision then determined that my osteoarthritis did not arise because of the demands of my work. I have attached a true copy of the Review Decision dated November 27, 2016 as Exhibit “F” to this affidavit.

The WCAT Appeal

12. On December 14, 2016, I appealed the Review Decision to the Workers’ Compensation Appeal Tribunal (“WCAT”) and requested an oral hearing. I have attached a true copy of my notice of appeal to WCAT and request for an oral hearing as Exhibit “G” to this affidavit.
13. By letter dated January 8, 2017, WCAT denied my request for an oral hearing and determined that my appeal would proceed by written submissions only. I have attached a true copy of WCAT’s January 8, 2014 letter as Exhibit “H” to this affidavit.
14. On May 25, 2017, WCAT made a decision denying my appeal (the “WCAT Decision”). I have attached a true copy of the WCAT Decision as Exhibit “I” to this affidavit.

- 15. In the WCAT Decision, WCAT stated that kneeling cannot cause or aggravate osteoarthritis. WCAT stated that I was over exaggerating the amount of kneeling required by my employment and that my osteoarthritis likely began before I said it did.

- 16. If I had been given an oral hearing, I would have told WCAT that I first experienced pain in my knees while kneeling at work. I would have also described the demands of my employment including the amount of kneeling required by my job, and told the WCAT panel that the BMA's assumptions about the time I spent kneeling and the onset of my pain were wrong.

AFFIRMED BEFORE ME)
at Vancouver, British Columbia)
on June 3, 2014)
_____)
A commissioner for taking affidavits)
for British Columbia)

Don Smith

Don Smith