

# **Workers' Compensation Appeal Tribunal**

## **Decision # 33**

**Claim No.: 95-0155**

Date of Notice of Appeal: January 16, 2002

Date of Hearing by appeal committee: March 7, 2002

Date of Decision: May 02, 2002

### **Appeal Committee Members appointed under s. 18.3(1) of the *Workers' Compensation Act***

Presiding Officer:	Heather MacFadgen
Member representative of employers:	Jan Stick
Member representative of workers:	Karen Waroway

**In attendance:** The Worker  
The Worker's representative – Julie Docherty  
Reporter/Recorder – Doug Ayers

**Location:** Boardroom 1B Main, 419 Range Road  
Whitehorse, Yukon Territory

## Summary for the Reader

**Decision under review:** Internal Review Committee (“IRC”) decision dated May 13, 1999.

**Sections of Act considered or applied by the IRC:** s. 17

**Policies considered or applied by the IRC:** None

**Issue addressed by the IRC:** Whether or not there was a causal relationship between the worker’s employment duties and his chondromalacia patella or patellofemoral syndrome of the left knee.

**Decisions made by the IRC:** Based on the medical consultant’s opinion, the worker’s chondromalacia, diagnosed February 6, 1995 was not caused by the worker’s employment. The benefit and entitlement clerk’s decision is confirmed.

**Sections of the Act considered or applied by appeal committee:**

s.18.3(4), 18.4(1), 90.(1.2), 90.(1)(c), of the current *Act*; ss. 3, 30, 101 of the *Worker’s Compensation Act*, S.Y. 1992 as amended to February, 1995.

**Policies applied or considered by appeal committee:**

- Policy CL-02 – Personal Injury by Accident, effective date January 01, 1993 (under review);
- Policy CL-10 – Referrals from one Medical Practitioner to Another, effective date January 01, 1993 (under review);
- Policy CL-23 – Evidence of Disability, effective date January 01, 1993 (under review);
- Policy CL-31 – Cumulative Trauma Disorders, effective January 01, 1993 (under review);
- Policy CL-40 – Disability, effective date 93-11-10;
- Policy CL-42 – Arising Out of and In the Course of Employment, effective date 93-11-17;
- Policy CL-47 – Pre-existing Conditions, effective date 94-04-01;
- Policy GC-09, Transitional Clause, effective date 95-03-07; and,
- REVOKED Policy CL- 38 – Required & Independent Medical Exams and Other Evaluations, effective date 93-01-02.

**Issues addressed by appeal committee:**

1. What is the appropriate legislation and policy to use to determine the issues of entitlement in this case?
2. What is the appropriate legislation for review of this appeal?
3. Did the Internal Review Committee err in finding that the worker's knee condition was not work-related?

**Decisions made by appeal committee:**

The worker's appeal is allowed. The decision of the IRC is reversed and varied as follows.

1. The worker has suffered and continues to suffer from a work-related disability – that is, recurrent patellar tendonitis – and therefore meets the eligibility requirement of s.3 of the *Act*.
2. The worker is entitled to rehabilitation assistance under section 30 of the *Act* should it be deemed appropriate by the board in consultation with the worker.

## Introduction

This is an appeal by a worker who has worked in the airline industry since 1973. He is a station attendant. The duties of this position involve loading and unloading aircraft, with regular work inside the constricted space of the aircraft belly, which is done on a worker's knees. The worker says that after many years working on his knees, he developed knee pain in the mid-1990's.

He is appealing an IRC decision dated May 13, 1999, which found that he had a pre-existing knee condition, chondromalacia, which was not caused by his employment. The IRC confirmed the benefit and entitlement clerk's decision not to accept the worker's claim.

It is important to note at the outset that the worker has not missed work because of his knee problems. This is not a time loss claim. Due to the worker's seniority in his workplace, he has been able to successfully request that his employer provide him with modified duties. This in turn allows him to avoid the duties [loading and unloading baggage on his knees inside the aircraft belly], which he says cause his knee problems.

However, he is concerned that this arrangement with his employer may not be something he can count on indefinitely. Hence, this appeal.

The worker gave his evidence under oath. The deputy workers' advocate, Julie Docherty, made submissions on behalf of the worker. The employer was notified of the hearing but declined to participate.

The appeal committee considered all of the worker's record as provided by the board. In addition, the board's hearing officer provided the following policies as relevant to the matter under appeal according to section 18.3(4) of the *Act*:

- Policy CL-02 – Personal Injury by Accident, effective date January 01, 1993 (under review);
- Policy CL-10 – Referrals from one Medical Practitioner to Another, effective date January 01, 1993 (under review);
- Policy CL-23 – Evidence of Disability, effective date January 01, 1993 (under review);
- Policy CL-31 – Cumulative Trauma Disorders, effective January 01, 1993 (under review);
- Policy CL-40 – Disability, effective date 93-11-10;
- Policy CL-42 – Arising Out of and In the Course of Employment, effective date 93-11-17;
- Policy CL-47 – Pre-existing Conditions, effective date 94-04-01;
- Policy GC-09, Transitional Clause, effective date 95-03-07; and,

- REVOKED Policy CL- 38 – Required & Independent Medical Exams and Other Evaluations, effective date 93-01-02.

The appeal committee has decided that it has jurisdiction under section 18.4(1) of the *Act* to hear this appeal.

## **Evidence from the Record and Hearing**

### ***Background***

We have added our comments in square brackets in this section of our decision, where necessary.

1. The Worker's Report of Injury/Illness is dated February 24, 1995. The worker reports that he injured his left knee "progressive[ly] over last five years and that "many years of kneeling in belly of aircraft, loading and offloading baggage, freight and mail" has caused the condition in his knee. The report states that he is employed on a permanent basis as a station attendant working 37.5 hours per week. He estimates his earnings, including additional earnings/benefits for the past 12 months are \$40,000.
2. The Employer's Report of Injury/Illness is dated April 3, 1995 and is signed by the "WCB clerk" [authorized to do so]. It states that the worker injured his left knee over the "last five years" because of "(over the years) kneeling in aircraft cargo compartment on metal floor". There is no earnings information, hours of work, or when the worker started working for the company included on the report. The report states that the worker is employed on a permanent basis.
3. Dr. C.'s first report (as treating physician ) to WCB is dated February 6, 1995. It states:

### ***History of Injury***

Left and right knee pain, especially left, present over several years. Kneels in aircraft and does knee-intensive work moving loads within aircraft, getting into constricted spaces, climbing up and down.

### ***Subjective Complaints***

Frequent non-specific pains in anterior left knee. Cannot kneel on left knee. Previously discussed problem with Dr. Z. in 94 06 16, again at that time noting cargo loading being primary aggravating factor. No collapse, no locking, no swelling, no redness, no heat.

*Objective Complaints*

Marked retropatellar crepitus with evoked pain. Stable collaterals, cruciate ligaments. No meniscal sign. No effusion.

*Diagnosis and/or Functional Problem*

Chondromalacia patella left knee, patellofemoral syndrome.

*Any Pre-Existing Condition Which May Affect Recovery?*

Not in relation to patella

[Emphasis added.]

The doctor suggests “medial quadricep building exercises” and that the worker can continue with his current work but should avoid “specifically aggravating activities, i.e., kneeling, deep knee bending”. [We note that the “patella” is commonly referred to as the kneecap.]

4. As part of the information gathering on this claim, the board obtained a handwritten file note by Dr. Z. dated June 6, 1994 which says: “Sore [left] knee – chronic problem which is aggravated with kneeling on floor (as he does with cargo loading or with pushing loads). On examination – full range of motion; no effusion; tender at [?] pole of patella. Impression: chronic inflammation at patella – patellar tendon junction. [We interpret this to mean there is inflammation where the patellar tendon joins the patella.]
5. A memo to the medical consultant dated July 13, 1995 asks the following questions:
  1. Has the worker aggravated a pre-existing condition?
  2. Has the worker’s continuous kneeling on a metal floor moving cargo in an airplane caused the problem with his knee?
  3. If the worker’s condition is an aggravation to a pre-existing condition, what would be the extent of our responsibility? [Emphasis added.]

[We note that the medical consultant’s report does not answer the questions with respect to “aggravation”.]

6. The medical consultant’s report dated August 1, 1995 states:

. . . Patellofemoral syndrome is a relatively common condition. It is not generally considered to be work related. One theory as to the causation is that there is some abnormality of the cartilage within the knee joint that breaks down over time. Some anatomical changes also tend to predispose to this condition. Treatment is aimed at strengthening the quadriceps muscle and avoiding trauma to the knee.

*Impression*

I would suggest that the patellofemoral syndrome is an underlying condition which was not caused by the worker's employment. However, kneeling on a metal floor can produce pain, especially in someone with an underlying condition. Consequently it is not unexpected that the worker would experience difficulties while at work, although the work itself is not the underlying cause of the problem.

Protecting the knees from direct trauma from kneeling would be helpful. Knee pads or foam guards could be considered. Another option would be to try to switch jobs so that prolonged kneeling was not necessary. I should note however that prolonged kneeling would not produce any permanent impairment of function but would only produce the symptoms of pain. . . . .

7. In a letter from the benefit and entitlement clerk dated January 24, 1996 the worker is notified that the board will not accept responsibility for his claim because "there is no direct causal relationship between your chondromalacia patella, also known as patellofemoral syndrome, of your left knee."
8. [We note *Dorland's Pocket Medical Dictionary* (25<sup>th</sup> ed.) defines "chondromalacia" as abnormal softening of cartilage.]
9. The worker appeals the decision not to accept his claim to the IRC. Entered as evidence at the IRC hearing are handwritten notes by the worker dated May 13, 1999 listing his employment history and job duties. He states as follows:

1973 – 1986 inc. worked in AC [aircraft] belly approx. 3 to 4 days per week – 1 hour per day . . .

Summer season we worked a third flight meant an extra \_ hour per day.

1987 – 1989 worked in AC belly 2 to 3 times per week for 1 hour each day.

By 1990 would work in belly for a couple of weeks and when knees, left especially hurt too much would stay out for a week or two then go in again and when pain became unbearable stay out again.

After the company tried to contract out work and we ended up having less

staff I found myself having to climb back in; worked in AC belly again on a fairly steady basis and unable to get the relief that was available before. Fairly soon my knees, especially the left one, was hurting.

By 1995 I decided to use my seniority and informed my co-workers that I was unable to continue working in the AC belly. Since then I've been inside worked in AC only a few times training new hires, but it doesn't take long before my left knee is really sore.

Other duties: loading and unloading baggage, freight and mail; loading and unloading commissary; supply of ground electrics, air start and water to aircraft, also hooking up heat to aircraft; give service when requested; installing and removing stretchers; de-icing aircraft; maintenance of ground support equipment; drawing up summer and winter schedules; looking after ramp employees' hours for payroll.

[Emphasis: We note here that the worker's notes report a recurrence of symptoms when he resumes knee-intensive work activities.]

### ***The IRC Decision***

10. The IRC finds that the worker suffers from chondromalacia but that it is not work-related. The IRC relies on the medical consultant's opinion to come to this conclusion. The IRC also finds that the medical consultant's opinion is "evidence to the contrary" which rebuts the presumption that because the condition arose *in the course* of employment, it therefore *arose out of employment*. [Both elements are required in order to be eligible for compensation.]

The IRC also notes that "in some instances, some factor of the employment will aggravate a pre-existing condition and the symptoms of that aggravation could be found to be a work-related disability." [Despite this general statement, the IRC does not consider the evidence in the record with respect to "aggravation" in this particular case – see for example Dr. C.'s report of cargo loading duties as the "primary aggravating factor" and also Dr. Z.'s report that the worker has a "chronic problem which is aggravated with kneeling on floor as he does with cargo loading."]

Lastly, the IRC finds that Dr. C. offers no opinion on the cause of the worker's chondromalacia and says there are no conflicting opinions in this case. [We note that the IRC appears to have overlooked the part of Dr. C.'s report (see para. #3) which states that the worker has no pre-existing condition in relation to his patella: in our view this does conflict with the medical consultant's opinion that

the worker's patellofemoral syndrome is an underlying (that is, a pre-existing) condition.]

***Medical Reports Concurrent and Subsequent to the IRC Decision***

11. Doctor C.'s progress report dated May 10, 1999 says the worker reports "knee problems persist every time he goes into the baggage compartment" and ... "there is no doubt whatsoever that this patient's knee problem is a WCB appropriately covered phenomenon." He suggests that the worker see a specialist, such as a sports medicine clinic, and that arrangements will be made for the worker to do so.

12. Dr. C.'s next progress report dated July 5, 1999 states:

... I have discussed the patient's particular condition with Dr. P. [orthopaedic specialist] and he and I disagree totally with the medical opinion given by the WCB physician [medical consultant]. The patient has been booked for formal consultation with Dr. P. The patient is quite upset by the wrong medical opinion given by the WCB physician, which has compromised his case and created totally unnecessary anxiety in him. The patient continues to try to avoid the specific work, in other words, climbing into the belly of an aircraft and contusing his knees, in order to avoid the pain that is generated and further damage to his knees.

13. Dr. P.'s specialist report dated September 27, 2000 (cc.'d to WCB) states:

... Examination shows .... normal knee alignment .... no significant muscular wasting .... normal gait .... no effusion .... no tenderness or inflammatory signs today. On the left side there is a scar about the posteromedial aspect of the knee where the patient had a hematoma drained years ago after a motor vehicle accident. This was a soft tissue injury apparently. There is perhaps slight thickening of the patellar tendon on the left side. Range of motion is full. There is no crepitation of tibiofemoral or patellofemoral joints. The knee is stable. There is no pivot shift. Popliteal fossa is negative. McMurray's is negative. Strength is good. Distal neurovascular function is normal.

Radiographs of the knee with weight bearing are normal.

Impression: This patient appears to have had patellar tendonitis. His symptoms have resolved as he has been able to avoid the repetitive activity at work which contributed to this. I don't see any sign of other

knee problems or any underlying problems of the knees which have contributed to this.

I would suggest the patient continues on with his own activity modifications and that I anticipate this will continue to manage his symptoms effectively. I reassured him that this is not likely to progress or cause him long term knee problems. [Emphasis added.]

14. [We note that a copy of the specialist report is date stamped (that is, received by the board) approximately a year ago on April 19, 2001. Probably as a result of Dr.Z's efforts – see para.#15 below.]
15. On April 4, 2001 Dr. Z. reports as follows:

This man came in to review problems that he has had in the past with his knees and ensure that a consultation report had been sent to W.C.B. In the past he has had recurring difficulties with his knees related to working with cargo, unloading at the airport. Whenever he had a lot of activity with repeated knee bending, moving loads in cold weather particularly, he would have difficulties. He saw Dr. P. in September of 2000 after a referral from Dr. C. At that time Dr. P. felt his history was likely one of recurrent patellar tendonitis which likely was aggravated by the repetitive activity at work. The patient states that in the last months he has been in a more supervisory role and his knees have been quite good. He wanted to ensure that Dr. P.'s consult was on file with W.C. B. and I note that it had been sent to them. I will also enclose another copy again with this letter. At this time he is having no significant problems. Dr. P. had recommended the patient continue on with his own activity modifications and that he expected no long term difficulties if this was done. [ Emphasis added.]

### ***The Worker's Testimony***

16. The worker says that before he worked for the airlines he worked in the hospitality industry in 1963, then was a timberman in the mines, then a diamond driller and finally a plant operator for a rail company in the Yukon.
17. From 1973 to 1986, he says he worked in the belly of aircraft on a fairly regular basis – 3 to 4 days per week for 1 hour each day, plus more for any extra flights added for the summer season. From 1987 to 1990, he says he perhaps worked a little less in the aircraft belly.

18. He says for the first 14 – 15 years of this work, there was no such thing as knee protection. He says in the winter the cold would come through the metal aircraft belly and his knees would often go numb.
19. He says the work generally involved moving baggage, mail, and freight onto and off the aircraft. Bags weighed up to 70 pounds. He and other workers would move around on their knees as if they were on their feet. They would lift as well as push cargo while on their knees.
20. He says the aircraft were usually well loaded year-round, with freight as well as passenger bags. In the 1970's and early 1980's he says a lot of the air cargo was freight for operating mines: up to 14 mines were in operation at one time. He says a lot of the freight for mining companies was very heavy ... engine parts, compressors, etc.
21. He says the typical aircraft had two freight compartments with separate doors: the forward compartment usually held 3000 – 3500 pounds of freight and the aft compartment held approximately 2500 pounds. He says freight included core samples – bags of rocks – weighing up to 100 pounds which he would lift while on his knees with no protection.
22. He says the station attendants in the Vancouver airport had knee protection 4 to 5 years before the Yukon workers did. He says it was not until workers were transferred to the Yukon from Vancouver that Yukon workers became aware of the knee protection available. He says at first the quality of knee pads was “not great” but it is better now. He says new improved knee pads came out in 1996-7.
23. The worker says he started wearing knee protection in the early 1980's. [We note this would indicate he went without knee protection for over a decade.]
24. The worker says that the typical aircraft he worked on were “ergonomically” very “unfriendly for workers”. He says because of the height of the baggage compartments it was impossible to stand up inside. He says he is 6 feet tall and even on his knees working in the aircraft belly his head is bent.
25. The worker says that apart from work he has no problem with his knees. He says he does a lot of hiking. He says he questioned family members and there is no history of knee problems in his family. He says he has been a soccer player and coach without problems. He says he had no problem with his knees from work until the 1990's. He says his left knee got tender first and then the right knee. He says by 1995 he found working on his knees “pretty painful”. He says in 1995 he used his seniority and told his co-workers he wouldn't work regularly in the aircraft belly other than when training newly hired workers.

26. He says he has never taken time off work for knee problems. He says he did use some medicine prescribed by his doctor for inflammation but he rarely used painkillers because he doesn't like taking medicine.
27. The worker says he is 56 years old and knows his body well. He says he has taken good care of it.
28. He says the medical consultant never examined him or talked to him. He says it upsets him when he reads through the information [from the medical consultant] who never examined him.
29. The worker says that the specialist Dr. P. questioned him thoroughly about his history and the appointment was at least an hour. Dr. P. also discussed work activities including the weights the worker lifted and the nature of any repetitive work moves. He says Dr. P. told him it was work that had caused his knee problems. He says he felt good that someone with Dr. P.'s qualifications had said there was nothing else [causing the knee problems].
30. He says the board did not contact him after Dr. P.'s report was sent to the board.
31. He says that when board staff told him his knee problems were because of an underlying condition rather than because of his work, he knew it was not right. He says he is not someone who overreacts but he felt there was "no logic behind" what the "board was saying to me" and if they had done his work they would understand [why he thought his knee problems were work-related].
32. He says when ownership of the airline changed recently he asked Dr. Z. whether he should continue modified duties [no cargo loading/unloading]. He says Dr. Z. wrote a letter saying the worker should not do the loading/unloading work duties because they could be hazardous to his health.
33. He says it took a long time to reach this level of appeal because it took a long time for him to get an appointment with the specialist, Dr. P.
34. The worker's advocate submits that one of the reasons the entitlement issue is important in this case is that "down the road there could be a flare-up or a work related [further] injury" with respect to the worker's knees.
35. Lastly, we note that in a July 5, 1999 report (after the IRC decision) Dr. C. reports that the worker might benefit from private physiotherapy in addition to the exercise he does on his own to strengthen his knees. He also says that the

worker tries to avoid work duties that generate pain and “further damage to his knees”.

## **Issues/Analysis**

**Issue #1:** What is the appropriate legislation for review of this appeal?

36. Section 90.(1.2) of the current *Act* provides that where a worker has commenced an appeal under s. 18 of the *Act* on March 31, 2000 or earlier, the appeal shall be decided according to predecessor legislation as it was in force before April 1, 2000.
37. The worker commenced his appeal to the tribunal pursuant to s.18 on November 5, 2001, (after April 1, 2000). Therefore, the appeal should be determined according to the present *Act*. In other words, the appeal tribunal has jurisdiction to hear and decide this appeal.

**Issue #2:** What legislation and policy should be used to determine issues of entitlement in appeal?

38. The worker and employer first report injury/illness to the board in February and April, 1995, respectively. Also, in February 1995 the worker’s physician, Dr. C., diagnoses chondromalacia patella left knee, patellofemoral syndrome. [There is an earlier doctor’s report of tendonitis in the knee by Dr. Z. in June, 1994 which he says is “aggravated” by kneeling with cargo loading duties.]
39. The transition provision of the current Act. [s. 90. (1) (c)] says “where a worker is entitled to compensation as a result of a disability caused in March 31, 2000 or earlier, the worker’s entitlement to compensation shall be determined according to predecessor legislation as it was in force before April 1, 2000”. Therefore, we find that it is the legislation in force in February, 1995 that must be used to determine the issues of entitlement in this case.
40. We do not find it necessary to consider Policy GC-09 in order to interpret the current transition provision: it was in force after Policy GC-09 was approved (and effective) in April, 1995. (Also, April, 1995 is subsequent to the date the worker filed this claim and the date his injury was initially diagnosed).
41. We will deal with the other policies the board submitted as relevant to this appeal in our Analysis of Issue #3, below.

**Issue #3:** Did the IRC err in finding that the worker’s knee condition was not work-related?

42. Section 3 of the *Act* in effect in February 1995 says that a worker who suffers a work-related disability is entitled to compensation. “Compensation” is defined as both payments and services – “services” can include rehabilitation assistance as set out in s. 30. Policies such as CS-07 “Vocational Rehabilitation” and CS-05 “Rehabilitation” [both in place in February, 1995] identify the board’s potential role in encouraging employers to participate in the worker’s rehabilitation process and in facilitating return to work with the same employer but with changes to the work done. (While it appears that the worker has not required the board’s assistance in this regard in the past, it is possible that the worker may need such assistance in the future.)
43. Section 101 defines disability as a “work-related incapacity”. Policy CL-40 “Disability”, in force at the time of the worker’s knee injury, defines disability as “the limiting, loss or absence of the capacity of an individual to meet occupational demands”. We find that there is clear medical evidence of disability in this case – the worker is incapable of loading and unloading cargo (on his knees in the aircraft belly) demanded in his occupation as a station attendant. In making this finding of disability, we rely on the evidence of Dr. C., Dr. P., and Dr. Z. at para. # 12, 13, and 15. Dr. C. says the worker must avoid performing such duties in order to avoid “further damage to his knees.” Dr. P. says modifying [work] activities allows the worker to manage his symptoms.
44. The next question we must address is whether the worker’s disability is work-related. The IRC found that it was not and relied on the opinion of the medical consultant in this regard. We prefer the opinions of Dr. C. and Dr. Z., the worker’s physicians, and Dr. P., the orthopaedic specialist. Unlike the medical consultant, these doctors examined the worker. In addition, Dr. P. has special expertise in diagnosing orthopaedic conditions such as the worker’s. Dr. P., Dr. Z. and Dr. C. all conclude that the worker’s knee problems are work-related and attributable to his repetitive knee-intensive work, loading and unloading cargo into and out of the aircraft belly.
45. Dr. C. originally diagnosed chondromalacia/patellofemoral syndrome whereas Dr. P. diagnoses patellar tendonitis which he attributes to repetitive activity at work. He specifically states that there is no underlying [that is, pre-existing] condition which has contributed to the worker’s knee problems.
46. It is clear that after Dr. P.’s report, Dr. C. accepts his diagnosis of “recurrent patellar tendonitis” which he says was “likely ... aggravated by the repetitive activity at work”. We find that this worker has recurrent patellar tendonitis.

47. We infer from both Dr. C.'s and Dr. P.'s reports that should the worker resume the repetitive work on his knees loading and unloading aircraft that his symptoms would likely recur. Therefore, we find that this worker continues to be disabled from resuming such work duties (or occupational demands).
48. We also find that the IRC was incorrect to state that in 1995 Dr. C. had "offered no opinion" on the cause of the worker's patellofemoral syndrome. Under the title in his report "History of Injury", Dr. C. states the worker "kneels in aircraft and does knee-intensive work moving loads within [the] aircraft". We think it is clear from Dr. C.'s report that he considers the knee-intensive work to be the source of this worker's injury. Dr. C. also notes that Dr. Z. "previously discussed problem ..." at that time noting cargo loading being the primary aggravating factor". In addition, as we noted earlier, Dr. C.'s report specifically states that he finds no pre-existing or underlying condition in relation to the worker's patella. In our view, both Dr. C. and Dr. Z. relate the worker's knee injury to his knee-intensive work duties. Both of these reports were evidence before the IRC in the earlier appeal.
49. With respect to the medical consultant's opinion, we find that it contains general statements on patellofemoral syndrome which are not specifically applied to the individual circumstances of this worker. For instance, the medical consultant says "patellofemoral syndrome is not generally considered to be work-related" (apparently) because it is thought to be caused by abnormality of the cartilage or some predisposing anatomical changes. Because he did not examine the worker, the medical consultant did not have an opportunity to obtain a detailed medical or employment history nor did he have an opportunity to either examine or investigate whether this worker in fact had anatomical changes or abnormal cartilage. Had he examined the worker, the medical consultant might have diagnosed patellar tendonitis as Dr. P. did, rather than chondromalacia patella diagnosed by Dr. C. – this in turn might have led to an application of Policy CL-31 to this worker's case: see para. #51 below.
50. We note that Dr. P. does not detect anatomical changes on his examination of the worker: he finds normal knee alignment/gait etc. He also reports that x-rays of the knee weight bearing are normal.
51. We have also considered Policy CL-31 "Cumulative Trauma Disorders" in force at the time of the worker's knee injury and submitted to us as relevant by the board hearing officer. Section (C) states that "occupational factors include muscular-skeletal lesions manifested by objective signs ... [such as] tendonitis ... for any work involving repeated movements ... [and] pressures ... over an extended period of time." [Emphasis added.] We find that this policy should have been

applied to this worker. We note that in 1994, Dr. Z. diagnoses tendonitis (that is, inflammation in the patellar tendon). This medical evidence was obtained by the board before the adjudicator or IRC made decisions on the worker's entitlement. Then, subsequent to those decisions, Dr. P. the specialist also diagnoses patellar tendonitis.

52. Based on Dr. Z.'s 1994 diagnosis and Dr. P.'s diagnosis in 2000 we find that the worker has a recurrent work-related cumulative trauma disorder (patellar tendonitis) as described within the terms of Policy CL-31.
53. We do not find it necessary to apply Policy CL-02 entitled "Personal Injury by Accident": this policy appears to use terminology [e.g. definition of "accident"] from legislation in effect prior to 1993, and not after, even though it became effective in 1993. In any event the policy states it is "under review", perhaps for this reason.
54. We will not address Policies CL-10 entitled "Referrals from One Medical Practitioner to Another", CL-23 entitled "Evidence of Disability" [deals with time loss from work] and CL-38 "Required and Independent Medical Exams and Other Evaluations" because the issues they address are not ones that are under appeal.
55. We do not find that Policy CL-47 entitled "Pre-existing Conditions" is relevant in this appeal because we find that this worker does not have a pre-existing condition. In making this finding of fact, we rely on the evidence of Dr. C. at para. #3 and also Dr. P. at para. #13. Both doctors state that there is no underlying or pre-existing condition which relates to the worker's knee injuries.
56. As we stated earlier, in our view both Dr. Z. and Dr. C. relate the worker's knee injury to his employment (see para. #3, 4). It is also clear that the specialist Dr. P. is of the opinion that the worker's tendonitis is work-related (see para. #13). Policy CL-42 entitled "Arising Out of and in the Course of Employment" provides guidelines for determining whether a disability is work-related. We find on the basis of Dr. C., Dr. Z., and Dr. P.'s reports that the worker's disability is linked to, originates from and is the result of, in whole or in part, the work activities undertaken because of the worker's employment. Specifically, we find that the worker's repetitive knee-intensive work activities over the course of two decades caused his recurrent patellar tendonitis. We also find that the worker's disability is linked to his employment in terms of time, place and activity. Therefore, he meets the eligibility requirements in both Section 3 of the *Act* and Policy CL-42.

## Conclusion

The worker's appeal is allowed. The decision of the IRC is reversed and varied as follows.

1. The worker has suffered and continues to suffer from a work-related disability – that is, recurrent patellar tendonitis – and therefore meets the eligibility requirement of s.3 of the *Act*.
2. The worker is entitled to rehabilitation assistance under section 30 of the *Act*, should it be deemed appropriate by the board in consultation with the worker.

Dated this 2<sup>nd</sup> day of **May, 2002** in the City of Whitehorse, in the Yukon Territory.

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Jan Stick, Member

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Heather MacFadgen, Presiding Officer

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Karen Waroway, Member