

Case Study: The Story of Oliver

Story	Timeline
<p>Oliver Finch, 48, was hurt at work on Wednesday, April 6, 2022, when the tailgate of his work truck collapsed while he was standing on it.</p>	<p><u>Date of injury:</u> Wednesday, 4/6/22</p>
<p>His left knee and his left wrist were injured when he fell on his left side. His supervisor saw the accident and immediately took Oliver to the emergency room.</p>	
<p>The ER doctors sent Oliver to the orthopedic doctor of his choice for further assessment of his left knee injury. He was not able to return to work that day because the doctor wanted to wait until the swelling in his left knee had gone down. Oliver was released to go home until his follow-up doctor appointment for his left knee on Wednesday, April 13.</p>	<p><u>First day of lost time:</u> Thursday, 4/7/22</p> <p><u>Follow-up doctor appointment:</u> Wednesday, 4/13/22</p>
<p>Oliver's left wrist was not as badly injured. At the ER, he was diagnosed with a sprain.</p>	
<p>On April 13, Oliver's doctor sent him for an MRI of his left knee, which revealed a torn medial meniscus, and he was kept off work and scheduled for a meniscectomy to be performed on Tuesday, May 10.</p>	<p><u>Left knee meniscectomy:</u> Tuesday, 5/10/22</p>
<p>Oliver's meniscectomy went well, but when the doctor did his routine assessment of the ACL during the surgery, he noted fraying, so he debrided the ACL during the same surgery.</p>	<p><u>ACL repair</u> in same surgery</p>
<p>On Wednesday, May 11, the day after Oliver returned home from his surgery, he called his insurance adjuster to ask when his lost time benefits would start. He had already lost 5 weeks of work and was quickly depleting his savings. His adjuster, Annie, apologized profusely, saying she would take care of issuing his TTD benefits right away. However, on her way outside after getting off the phone with Oliver and before cutting his TTD check, Adjuster Annie fell down the stairs. Instead of issuing Oliver's check, she was taken to the ER herself, where she was found to have broken her right wrist.</p>	

Because Adjuster Annie would be off work for the next 4 weeks, Backup Betty took over Oliver's claim, along with several others. Fortunately, on May 13, Betty cut Oliver's TTD check and reported the payment to the DWC. Oliver's check was only \$800 for his first week of TTD, though, because Betty wanted to become more familiar with his claim before she issued the full payment. She reported this payment through the DWC Pending Reports application.

First TTD check issued (\$800):
Friday, 5/13/22

As the first payment of TTD was over 5 weeks late and was for more than \$500, the DWC sent out an auto-generated delay inquiry on May 17, 2022.

DWC sent delay inquiry:
Tuesday, 5/17/22

Oliver returned to work on May 26, 2022.

Return to work:
Thursday, 5/26/22

Backup Betty received the delay inquiry from the DWC and responded that she had issued a payment as soon as she was made aware of Oliver's lost time. Oliver's \$1,200 weekly wage gave him a weekly TTD rate of \$800. However, by the time of the first TTD payment, \$4,266.40 in TTD payments was due and accrued.

The DWC did not excuse the delay and assessed Betty a penalty of \$426.64 – 10% of the \$4,266.40 due and accrued TTD – and instructed her to also pay Oliver the TTD balance due of \$3,200. (She had already paid \$800 in TTD, but that was paid late, so the 10% delay penalty is calculated on the full amount of late TTD.) On June 6, Betty paid Oliver \$5,493.04:

TTD and 10% delay penalty paid:
Monday, 6/6/22

\$ 426.64 for the delay penalty, and
\$3,466.40 for the TTD due through May 13, and then
\$1,600.00 for the last two weeks of TTD before Oliver returned to work on May 26.

Oliver's left wrist was still painful 8 weeks after the date of the injury, and he returned to the doctor on June 7. On the same day, Oliver had an MRI of his left the wrist, which showed a tendon tear. Surgery was scheduled for June 15, 2022, and Oliver was put on light duty for the week between his doctor appointment and the surgery date. His employer was able to accommodate the light duty at Oliver's regular wage rate. Although the surgery went well, Oliver was kept off work for 4 weeks to recover. Adjuster Annie had returned to work and paid Oliver's TTD correctly and timely.

Back to doctor:
Tuesday, 6/7/22

First day of lost time for left wrist surgery:
Wednesday, 6/15/22

Oliver returned to work on July 14 and continued on full duty until his October 12, 2022, doctor's appointment when he was declared at end of healing (EOH) and rated 2% PPD at the left wrist. On October 13, 2022, the insurance company received the final medical report. Annie thought she needed to wait for all the ratings to arrive before paying any PPD benefits, so she did not send the final medical report for the wrist injury to the DWC while she waited for the final medical report for the knee.

Return to work:
 Wednesday, 7/14/22

End of healing for left wrist (rated 2%):
 Wednesday, 10/12/22

At Oliver's 9 a.m. appointment on November 10, 2022, the doctor found that Oliver had reached EOH for his left knee as of that day and sent the insurance company the final medical report with a PPD rating of 18% at the left knee: 5% for the statutory minimum for a meniscectomy, 10% for an ACL reconstruction, and an additional 3% PPD because Oliver's knee was still painful. 18% PPD at the knee equates to 76.5 weeks of benefits.

End of healing for left knee (18% PPD)
 Thursday, 11/10/22

While twisting to lift a box on February 1, 2023, Oliver felt a pop in his left knee and immediately crumpled to the ground in extreme pain. Oliver went to the emergency room where the doctor associated the pain with Oliver's original April 6, 2022, knee injury. After an MRI of the knee, the doctor determined that Oliver needed a total knee replacement and took him off work until surgery could be completed. Annie started up the TTD benefits timely. Go Annie!

Another left knee injury:
 Wednesday, 2/1/23

First day of lost time:
 Thursday, 2/2/23

Oliver's doctor kept him off work between February 2, 2023, and March 7, 2023, the date scheduled for his knee replacement surgery. On April 3, 2023, Annie sent the operative reports from Oliver's May 10, 2022, knee surgery and his March 7, 2023, knee surgery to DWC as she was instructed. At his June 14, 2023, appointment, Oliver was released to return to work effective June 15, 2023.

Left total knee replacement surgery:
 Tuesday, 3/7/23

Operative reports sent to DWC:
 Monday, 4/3/23

One year post-op, on March 7, 2024, Oliver's doctor released him from care and prepared a final medical report, which showed Oliver had 50% PPD to his left knee as a result of the total knee replacement. The doctor's office faxed the final medical report to the insurance company the same day. Annie faxed the final medical report to the DWC on Tuesday, March 12.

Returned to work:
 6/15/23

Released from care (EOH); rated 50% at left knee, FMR sent to Annie:
 Thursday, 3/7/24

On Tuesday, April 23, 2024, the DWC prepared and sent a final worksheet showing 65% PPD to the left knee, as well as the 2% to the left wrist and the multiplier.

Worksheet issued:
 Tuesday, 4/23/24

When Annie reviewed Oliver's file on June 6, 2024, she was unsure why the DWC had rated Oliver's knee PPD higher than the doctor's 50% PPD. She thought about getting an IME, but then she closely reread the worksheet the DWC had sent and remembered that Oliver's knee surgeries carried statutory minimum ratings and that they were stacked.

The worksheet showed that the total PPD due to Oliver was \$103,477.70. She had not paid any PPD at all. Because Oliver had had intermittent periods of TTD, PPD was due for all of the weeks between his TTD. The DWC worksheet showed that of the total PPD due to Oliver, as of April 23, 2024, \$28,236.00 was due and accrued. (Oliver's injury date was April 6, 2022.)

The periods when he should have been paid PPD are:

- 5/6/22 – 6/15/22 (3 weeks)
- 7/14/22 – 2/1/23 (29 weeks)
- 6/15/23 – 4/23/24 (46 weeks)
- Total = 78 weeks
- 78 weeks x \$362 = \$28,236.00

Annie's jaw dropped. She immediately issued a payment to Oliver in the current amount of due and accrued PPD, \$30,046.00 (\$28,236.00 due and accrued as of April 23, 2024 plus the five weeks that had passed since the worksheet was created). Annie also knew that she soon would be getting a letter from the DWC asking for the reason that she had not paid PPD when she should have. Right away, she established the automatic monthly payments to Oliver that would continue until all his PPD was paid out, so she wouldn't miss another payment on his claim.

Annie was correct. Shortly after she reported the PPD payment through the Pending Reports, she got a letter from DWC asking for either an explanation for the late payment or that she pay Oliver the 10% delay penalty on her first PPD payment, or \$3,004.60. She issued the \$3,004.60 payment to Oliver and then took a break, carefully walking down the steps to get a cup of coffee.

78 weeks of due and accrued PPD are from:

- **3** weeks between 5/26/22 and 6/15/22
- **29** weeks between 7/14/22 and 2/1/23
- **46** weeks between 6/15/23 and 4/23/24

First PPD paid:
6/6/24

Per DWD 80.32(4), Knee = 425 weeks of benefits

Oliver qualifies for the maximum weekly PPD rate in effect on the date of his injury - \$362.00

Before the total knee replacement, what PPD is due to Oliver?

Body part	Rating	Number of weeks	Weekly rate	Total due
Left knee	5% - stat min for meniscectomy (May 10)	21.25	\$362	\$7,692.50
Left knee	10% - stat min for ACL repair (May 10)	42.5	\$362	\$15,385.00
Left knee	Additional 3 % from doctor (May 10)	12.75 weeks		\$4,615.50
			<i>Subtotal for knee</i>	<i>\$27,693.00</i>
Left wrist	2%	8 weeks	\$362	\$2,896.00
Multiplier (\$102.53)	(because multiple body parts were injured in the same accident)	20% of lowest number of weeks = 20% of 8 = 1.6 weeks	\$362	\$579.20
Total due before total knee replacement				\$31,168.20

After the total knee replacement, what PPD is due to Oliver?

Body part	Rating	Number of weeks	Weekly rate	Total due
Left knee	5% - stat min for meniscectomy (May 10)	21.25	\$362	\$7,692.50
Left knee	10% - stat min for ACL repair (May 10)	42.5	\$362	\$15,385.00
Left knee	Additional 3 % from doctor (May 10)	12.75 weeks		\$4,615.50
			<i>Subtotal for knee</i>	<i>\$27,693.00</i>
Left wrist	2%	8 weeks	\$362	\$2896.00
Multiplier (\$102.53)	(because multiple body parts were injured in the same accident)	20% of lowest number of weeks = 20% of 8 = 1.6 weeks	\$362	\$579.20
	Total due before total knee replacement			\$31,168.20
Left knee	50% - stat min for total knee replacement	212.5 weeks	\$362	\$76,925.00
Left knee	3% from original rating removed because stacking of statutory minimum ratings from separate surgeries for the same body part excludes any additional PPD beyond the statutory minimum ratings	<12.75 weeks>	\$362	<\$4,615.50>
	Total from original ratings plus rating for knee replacement (\$76,925.00) less non-stackable 3% (\$4,615.50)			\$103,477.70

What delay issues do you see in Oliver's story?

- TTD delay

Oliver's first day of lost time was April 7, 2022, but his first TTD payment was not made until May 13, 2022. He did not receive any explanation for why he did not get any TTD benefits, although Annie should have sent him an explanation within 14 days of losing time. Her letter should also have instructed him that he had the right to file an appeal.

Also, Oliver's first TTD payment was only for one week of benefits and not the 5 days and 2 weeks for which he should have received TTD. His first TTD payment was over 14 days late and, at \$800, was for more than \$500, so the DWC system auto-generated a delay inquiry letter.

- PPD delay
- Statutory minimums

Three statutory minimum ratings come into play with Oliver, all involving his knee.

- The meniscectomy carries a 5% statutory minimum,
- The ACL repair carries a 10% statutory minimum, and
- The total knee replacement carries a 50% statutory minimum.

- Delayed payment of PPD for statutory minimum ratings

Annie should have been aware when Oliver had his knee surgeries that they would all carry statutory minimum PPD ratings. She DID NOT have to wait for a doctor's rating to begin paying PPD.

According to §102.32(6)(b), Wis. Stats., PPD for statutory minimum ratings shall begin on the earliest of:

- Within 30 days of the end of healing period, **or**
- Within 30 days of the date compensation for temporary disability ends

When Oliver returned to work for the first time, on May 26, 2022, PPD began to accrue. Annie should have begun paying what she already was aware of, in this case, the statutory minimum ratings for the meniscectomy and ACL repair, even though she did not yet have the doctor's final medical report. However, when Oliver started losing time again on June 16, 2022, PPD benefits should stop because he was once again eligible for TTD.

- Intermittent periods of disability when PPD is due (or, looked at a different way, when Oliver is back at work and not being paid TTD, he should be paid PPD.)

Let's look at the timeline for Oliver's claim:

TTD	April 7, 2022 - May 25, 2022 (7 weeks)
Back at work:	May 26, 2022 - June 15, 2022 (3 weeks)
TTD	June 16, 2022 - July 13, 2022 (4 weeks)
Back at work	July 14, 2022 - February 1, 2023 (29 weeks)
TTD	February 2, 2023 - June 14, 2023 (19 weeks)
Back at work	June 15, 2023 – August 30, 2024

§102.32(6)(e), Wis. Stats., requires PPD for statutory minimum ratings to be paid monthly. PPD accrues and is payable between intermittent periods of TTD. So, as of June 14, 2023 when Oliver finished his last period of TTD, 32 weeks PPD should have already been paid. [for the two times he was back at work between surgeries: May 26, 2022 – June 15, 2022 and July 14, 2022 - February 1, 2023.]

- Stacking for knee surgeries – exclude the extra 3% the treating doctor assessed for pain – it is not a statutory minimum.

Annie should be aware of stacking and how it pertains to knee injuries. Since Oliver's first surgery included both a meniscectomy (5% statutory minimum) and an ACL repair (10% statutory minimum), and his doctor assessed an additional 3% PPD for his pain, his left knee had an initial PPD rating of 18%. His subsequent surgery, the total knee replacement, also had a statutory minimum rating (50%). Although the discretionary 3% is included in the original rating, when there is a subsequent surgery with a statutory minimum rating, the statutory minimum ratings are stacked together but the earlier 3% non-statutory minimum rating is removed. The stacked statutory minimum ratings give Oliver 65% PPD to the left knee (50%+15%). Stacking only includes the statutory minimum ratings and does not include any additional ratings the treating doctor ascribe.

- Multiple injuries – don't wait until everything is done. Pay what you owe when you know.

Annie believed that since Oliver had multiple injuries (knee and wrist), she had to wait for all the FMRs to begin paying his PPD benefits. This is incorrect. Annie should have paid what she was able to ascertain as soon as it became due, as long as Oliver was not receiving TTD benefits at the same time. If the PPD benefit is a statutory minimum (knee surgeries), §102.32(6)(b) Wis. Stats. states that the first PPD payment is expected within 30 days of the injured worker's return to work date or suspension of TTD, whichever is earlier. If PPD is not a statutory minimum (wrist), payment is expected within 30 days of receipt of a final medical report that gives a PPD rating. (§102.32(6)(c))

- Submitting payment information and final medical reports - not just sending operative reports

According to DWD 80.02(2)(e), Annie is required to report any changes in payment type within 30 days of the change, so she needed to submit a WKC-13 any time there was a start, stop, or change to TTD or PPD payments. She also should have sent all operative reports and final medical reports to the DWC when she received them. (DWD 80.21(1)) It is also good practice to inform the department of any pending surgeries or MRIs etc. by entering a note in Pending Reports.