

Case Study: The Story of Oliver

Story	Timeline
<p>Oliver Finch, 48, hurt his left knee and left wrist at work on Wednesday, April 6, 2022, when the tailgate of his work truck collapsed while he was standing on it.</p> <p>His supervisor saw the accident happen 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 pending his follow-up doctor appointment for his left knee on Wednesday, April 13.</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. Oliver was kept off work until his meniscectomy surgery, which was done on Tuesday, May 10.</p> <p>Oliver's meniscectomy went well, but the doctor noted fraying of Oliver's ACL, so he debrided the ACL during the 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, she decided to take a quick break first. On her way outside after getting off the phone with Oliver and before preparing his TTD check, Adjuster Annie fell down the stairs and broke her right wrist.</p> <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, to cover 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.</p>	<p><u>Date of injury:</u> Wednesday, 4/6/22</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><u>Left knee meniscectomy:</u> Tuesday, 5/10/22</p> <p><u>ACL repair in same surgery</u></p> <p><u>First TTD check issued (\$800):</u> Friday, 5/13/22</p>

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.

Oliver returned to work on May 26, 2022.

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 (May 13), \$4,266.40 in TTD payments was already 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:

\$ 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. The MRI done that day showed a tendon tear. Surgery was scheduled for June 16, 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.

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

Return to work:
Thursday, 5/26/22

DWC assessed 10% delay penalty

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

Back to doctor for left wrist:
Tuesday, 6/7/22

First day of lost time for left wrist surgery:
Thursday, 6/16/22

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 for Oliver's wrist. 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 end of healing (EOH) for his left knee as of that day. The final medical report was sent to the insurance company on the same day. The doctor assessed 18% PPD at the left knee:

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

- 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 equals 76.5 weeks of benefits.

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

While twisting to lift a box on February 1, 2023, Oliver felt a painful pop in his left knee and immediately crumpled to the ground. He 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 on the same day, the doctor determined that Oliver needed a total knee replacement and took him off work until his scheduled surgery date, March 7, 2023. Annie started up the TTD benefits timely. Go Annie!

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

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

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. At his June 21, 2023, appointment, Oliver was released to return to work effective June 22, 2023.

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

Returned to work:
6/22/23

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 reports for the wrist and knee PPD to the DWC on Tuesday, March 12.

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

On Thursday, April 25, 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.

When Annie reviewed Oliver's file on June 5, 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 DWC worksheet 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. Annie 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 periods of TTD. The DWC worksheet showed that of the total PPD due to Oliver, as of April 25, 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:

- 5/26/22 – 6/15/22 (3 weeks)
- 7/14/22 – 2/1/23 (29 weeks)
- 6/22/23 – 4/25/24 (44 weeks)
- Total = 76 weeks
- 76 weeks x \$362 = \$27,512.00 due and accrued PPD

Annie's jaw dropped. She immediately sent Oliver a payment of \$29,322.00, the amount of due and accrued PPD, (\$27,512.00 due and accrued as of April 25, 2024 plus the six weeks that had passed since the worksheet was created). Annie also knew that the DWC would soon ask her why 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 \$2,932.20. She issued the \$2,932.20 payment to Oliver and then took a break, carefully walking down the steps to get a cup of coffee.

Worksheet issued:
Thursday, 4/25/24

Reviewed DWC worksheet:
Thursday, 6/5/24

76 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
- **44** weeks between 6/22/23 and 4/25/24

First PPD paid:
6/6/24

Calculations for Oliver's PPD

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% - statutory minimum for meniscectomy (May 10, 2022)	21.25	\$362	\$7,692.50
Left knee	10% - statutory minimum for ACL repair (May 10, 2022)	42.5	\$362	\$15,385.00
Left knee	Additional 3% from doctor (May 10, 2022)	12.75 weeks	\$362	\$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
	Amount due before total knee replacement surgery			\$31,168.20

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

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Left knee	5% - statutory minimum for meniscectomy (May 10, 2022)	21.25	\$362	\$7,692.50
Left knee	10% - statutory minimum for ACL repair (May 10, 2022)	42.5	\$362	\$15,385.00
Left knee	Additional 3% from doctor (May 10, 2022)	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
	<i>Amount due before total knee replacement surgery</i>			<i>\$31,168.20</i>
Left knee	50% - statutory minimum 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 when he began losing time from work. 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, all involving his knee, come into play with Oliver.

- 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 benefit payments 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. Even though she did not yet have the doctor's final medical report, Annie should have begun paying what she already was aware of, in this case, the statutory minimum ratings for the meniscectomy and ACL repair. 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 21, 2023 (20 weeks)
Back at work	June 22, 2023 – August 30, 2024

§102.32(6)(e), Wis. Stats., requires monthly PPD payments, which accrue and are payable between intermittent periods of TTD. So, as of June 21, 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: 3 weeks between May 26, 2022 – June 15, 2022 and 29 weeks between 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. Oliver's doctor rated him with 18% PPD to his L knee for his first surgery. The surgery included both a meniscectomy (5% statutory minimum) and an ACL repair (10% statutory minimum), and the doctor assessed an additional 3% PPD for Oliver's pain. His total knee replacement also had a statutory minimum rating (50%). Although the discretionary 3% PPD is included in the original rating, when there is a subsequent surgery with a statutory minimum rating, only 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 ascribes.

- 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 could not start paying his PPD benefits until she had received all the FMRs. 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.