

**FINAL AWARD ALLOWING COMPENSATION**  
(Modifying Award and Decision of Administrative Law Judge)

Injury No. 09-111355

Employee: Richard Ambrozetes  
Employer: Smurfit Stone Container Enterprise  
d/b/a Rock Tenn  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

**Preliminaries**

The parties asked the administrative law judge to determine the issues of: (1) medical causation; (2) liability for past medical expenses in the amount of \$37,684.90; (3) past temporary total or temporary partial disability for a period covering 9 and <sup>3</sup>/<sub>7</sub> weeks from May 27, 2011, through August 8, 2011, in the amount of \$4,704.76; (4) nature and extent of permanent partial disability; and (5) attorney's costs and fees.

The administrative law judge rendered the following determinations: (1) employee met his burden to establish medical causation; (2) employer is liable for \$29,148.70 in medical expenses accrued by employee in an attempt to cure and relieve the effects of his work-related injury; (3) employer is liable for \$5,275.04 in temporary total disability benefits; (4) employee is entitled to receive 20% permanent partial disability referable to his right ankle; and (5) employee's request for costs and attorney's fees under § 287.560 RSMo is denied, because employer had reasonable grounds to deny this case.

Employer filed a timely application for review with the Commission alleging the administrative law judge erred: (1) in finding that all medical experts determined that employee suffered a right ankle sprain; (2) in finding the opinions of Drs. Gary Schmidt, Eli Shuter, and Dwight Woiteshek more persuasive than the opinions from Dr. John Krause, and in failing to take into account the testimony from the treating physician Dr. Amod Paranjpe; (3) in ignoring employee's medical records; (4) in awarding past medical expenses; (5) in awarding past temporary total disability benefits; and (5) in awarding permanent partial disability benefits.

For the reasons stated below, we modify the award of the administrative law judge referable to the issue of past medical expenses.

Employee: Richard Ambrozetes

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## **Discussion**

### Past medical expenses

In its brief, employer argues that the administrative law judge misstated the opinions from its medical expert, Dr. John Krause. We disagree, but wish to provide some clarifications. The administrative law judge suggests in her award that Dr. Krause “insists” that surgery to employee’s right ankle was not indicated because employee did not have instability in the ankle. See *Award*, page 8. This statement by the administrative law judge correctly recites the initial opinion from Dr. Krause set forth in his letter of September 10, 2012. Employer notes, however, that Dr. Krause conceded, on cross-examination at his deposition, that ankle instability is not necessarily required before surgery for the right ankle would be indicated, and that if employee had a tear of his peroneal tendon with ongoing pain, it was appropriate to repair it. See *Transcript*, page 643. Having acknowledged this ambiguity in Dr. Krause’s opinions, we fail to appreciate how this circumstance supports employer’s arguments on appeal.

In any event, we defer to and adopt as our own the administrative law judge’s well-reasoned findings with regard to the weight to be given to the various medical expert opinions in this matter. We do note, however, that the administrative law judge’s award of past medical expenses appears to have included the cost of treatments for employee’s right knee pain on July 25, 2011, and October 31, 2011. Specifically, the administrative law judge cited employee’s Exhibit 5 as supporting her award of a total of \$29,148.70 in past medical expenses. Exhibit 5 lists treatments on July 25, 2011, and October 31, 2011, at a cost of \$102.00 each. The medical treatment records corresponding to those dates of service reveal that those costs were incurred for doctor’s office visits in connection with injections of the right knee performed by Dr. James Schaberg. See *Transcript*, pages 244, 304, 397-98.

It appears that the July 25, 2011, treatment with Dr. Schaberg was at least somewhat related to the right ankle work injury, given that Dr. Schaberg’s note suggests that employee’s right knee pain arose in the context of employee’s limping after right ankle surgery. But in both his testimony at the hearing before the administrative law judge and in his brief before this Commission, employee specifically conceded that he is not seeking any recovery for his right knee complaints. See *Transcript*, page 57. We note also the uncontested evidence that employee suffered from longstanding preexisting arthritis in his right knee, as well as the absence of any expert medical opinion that the right knee treatments with Dr. Schaberg flowed from the effects of the accident of November 12, 2009.

Given these circumstances, we conclude pursuant to § 287.140.1 RSMo that the July 25, 2011, and October 31, 2011, right knee treatments with Dr. Schaberg were not reasonably required to cure and relieve the effects of the right ankle work injury, and we hereby modify the administrative law judge’s award accordingly.

## **Conclusion**

We modify the award of the administrative law judge as to the issue of past medical expenses.

Employer is liable for a total of \$28,944.70 in past medical expenses.

Employee: Richard Ambrozetes

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The award and decision of Administrative Law Judge Linda J. Wenman, issued March 10, 2015, is attached hereto and incorporated by this reference to the extent not inconsistent with our findings, conclusions, decision, and modifications herein.

The Commission approves and affirms the administrative law judge's allowance of an attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 14<sup>th</sup> day of July 2015.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Richard Ambrozetes Injury No.: 09-111355  
Dependents: N/A Before the  
Employer: Smurfit Stone Container Enterprise **Division of Workers'**  
presently DBA Rock Tenn **Compensation**  
Additional Party: Second Injury Fund (open) Department of Labor and Industrial  
Relations of Missouri  
Insurer: Self-insured Jefferson City, Missouri  
Hearing Date: September 30, 2014 & December 10, 2014 Checked by: LJW

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: November 12, 2009
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While using a smart cart moving materials from one line to another, contact was made with materials on another line, and the materials shifted falling on Employee.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Right knee (resolved), right ankle/foot.
14. Nature and extent of any permanent disability: 20% PPD referable to the right ankle/foot at the 155 week level.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$425.82

Employee: Richard Ambrozetes Injury No.: 09-111355

- 17. Value necessary medical aid not furnished by employer/insurer? \$29,148.70
- 18. Employee's average weekly wages: \$748.49
- 19. Weekly compensation rate: \$498.99 / \$422.97
- 20. Method wages computation: Stipulated

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses:	\$29,148.70
10 4/7 <sup>th</sup> weeks of temporary total disability (or temporary partial disability)	\$5,275.04
31 weeks of permanent partial disability from Employer	\$13,112.07

22. Second Injury Fund liability: Open

**TOTAL:** \$47,535.81

23. Future requirements awarded: N/A

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Nancy Mogab

**FINDINGS OF FACT and RULINGS OF LAW:**

Employee:	Richard Ambrozetes	Injury No.: 09-111355
Dependents:	N/A	Before the
Employer:	Smurfit Stone Container Enterprise presently DBA Rock Tenn	<b>Division of Workers' Compensation</b>
Additional Party:	Second Injury Fund (open)	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri
Insurer:	Self-insured	Checked by: LJW

**PRELIMINARIES**

A hearing for final award was held regarding the above referenced Workers' Compensation claim by the undersigned Administrative Law Judge on September 30, 2014, and reconvened on December 10, 2014.<sup>1</sup> Attorney Nancy Mogab represented Richard Ambrozetes (Claimant). Smurfit Stone Container Enterprise, dba Rock Tenn (Employer) is self-insured and represented by Attorney David Green. The Second Injury Fund (SIF) did not participate in the hearing and remains open.

Prior to the start of the hearing, the parties identified the following issues for disposition in this case: medical causation; liability of Employer for past medical expenses; liability of Employer for past temporary total disability (TTD) benefits; liability of Employer for permanent partial disability (PPD) benefits; and liability of Employer for opposing counsel's costs and fees. Claimant offered Exhibits 1-15. Employer offered Exhibit A-J. Exhibits 1-14 and A-J were admitted into the record, and objections to Exhibit 15 were sustained. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

**FINDINGS OF FACT**

All evidence presented has been reviewed. Only testimony and evidence necessary to support this award will be summarized.

1. Claimant is currently 50 years old, a high school graduate, and has completed approximately 90 college credit hours. Claimant has worked for Employer in several different job positions, but currently works for Employer as a senior material handler. As a senior material handler, Claimant drives a "smart cart" that travels down a set line picking up stock from the assembly

<sup>1</sup> At the close of testimony on September 30, 2014, the parties consented to leave the hearing record open to allow the parties to offer additional exhibits and testimony regarding the disputed issues of costs and attorney fees, which were unknowable on the date of the original hearing. A post-trial briefing schedule was established on September 30, 2014, which required Claimant's brief to be due on October 31, 2014, and Employer's brief to be due on November 21, 2014. The hearing reconvened on December 10, 2014, to allow the additional exhibits to be offered and ruled-on. The hearing record formally closed on December 10, 2014.

line next to his set line. The smart cart moved stock from one line to another. While working as a material handler, Claimant worked the 3<sup>rd</sup> shift, from 11:00 pm to 7:00 am.

2. On November 12, 2009, Claimant was riding in a smart cart being driven by his supervisor. In Claimant's estimation, the supervisor loaded the stock too high, and while traveling down the set line the loaded stock came into contact with the assembly line stock causing the loaded stock to shift, falling and pinning Claimant. Just prior to impact, Claimant twisted his body to the left to avoid the falling stock. The stock struck the right side of Claimant's body from his shoulder to his foot. Claimant was able to push the fallen stock off him and took a 15 minute break. When he returned from break, Claimant requested his supervisor fill out a "near miss form," and when the supervisor offered medical care, Claimant declined believing he would be "ok." Claimant finished his shift.

Claimant was off the weekend, noticed pain in his right knee, and noticed that dorsiflexion of his right ankle caused right foot/ankle pain.<sup>2</sup> Claimant tried to avoid walking over that weekend. Upon his return to work, Claimant informed his supervisor that he needed medical care. On November 19, 2009, Employer arranged for Claimant to be seen at Barnes Care. At Barnes Care, Claimant was examined by a nurse practitioner, who noted Claimant had no visual evidence of swelling, bruising, redness, warmth, or deformity. Claimant was able to squat without pain. Right ankle x-rays were obtained and were considered normal. Claimant's diagnosis was pain in the joint of the lower leg and right ankle. Claimant was advised to take Tylenol and follow-up as needed. Claimant returned to his job as a material handler, but continued to experience right foot/ankle pain. Claimant experienced ankle pain while sleeping, and upon awaking his right ankle was stiff and painful. As his work mostly involved sitting in a smart cart and very little walking, Claimant waited for the ankle pain to resolve.

Approximately three months after the injury, Claimant bid for a job as a "helper." In that job Claimant was stacking stock, but the job required him to twist side to side which aggravated his right ankle pain. Claimant informed his supervisor that he couldn't perform the helper job, and he returned to being a material handler.

On March 10, 2010, Claimant presented to Progress West Healthcare Center due to increasing pain in his right ankle over the lateral malleolus. On physical examination, Claimant demonstrated mild tenderness over the lateral ligaments of the right ankle. There was no noted effusion, erythema, or swelling. Repeat right ankle x-rays were negative for fracture, dislocation, or bone destruction. Minimal degenerative spurring was present in the right ankle joint. Claimant was diagnosed with a right ankle sprain. Claimant was placed in an air cast, provided pain medication, and was advised to seek orthopedic follow-up due to the chronicity of his pain.

Following his evaluation at Progress West, Employer returned Claimant to Barnes Care for further evaluation on March 18, 2010. During examination at Barnes Care, the physician noted there was no ligament laxity. The examining physician told Claimant his symptoms were consistent with plantar fasciitis, Claimant was urged to insert heel cups into his shoes, perform home exercises, and if not improved to seek care of a podiatrist through private health insurance as the condition was not work related. Employer stipulated no further medical care under workers' compensation was provided to Claimant after March 2010.

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<sup>2</sup> The right knee pain resolved without treatment.

3. On March 1, 2011, Claimant sought medical care for his right ankle with Dr. Paranjpe, a podiatrist, using his private medical insurance. Dr. Paranjpe noted Claimant's history of the November 2009 ankle injury, noting Claimant reported "pain first thing in the morning with weight bearing, standing, walking, activities, and shoe gear." Claimant further reported his "pain improves after some activity, however, is persistent and significant throughout the day." Upon examination, Dr. Paranjpe noted moderate to severe pain to palpation at the ATFL ligament. Dr. Paranjpe diagnosed a right foot ATFL ligament strain and ordered an MRI of the right foot.

On March 8, 2011, Dr. Paranjpe reviewed the MRI findings with Claimant. The right foot MRI demonstrated a chronic tear of Claimant's right ATFL along with a longitudinal split of his peroneal tendon. Dr. Paranjpe recommended surgical repair. Claimant notified Employer that surgery was being recommended, and Employer referred Claimant to its TPA, Broadspire. On April 19, 2011, Broadspire provided written notice to Claimant that his need for right foot surgery was not compensable based on the medical records reviewed.

On May 27, 2011, Claimant underwent surgical repair of his right foot by Dr. Paranjpe using his private medical insurance. Dr. Paranjpe's post-operative diagnoses included the following: right ankle joint arthritis with synovitis; right primary rupture of the anterior talofibular ligament; and right longitudinal intrasubstance tear of the peroneus brevis tendon. Dr. Paranjpe performed the following procedures: right arthroscopy with synovectomy of the right ankle joint; an open primary repair of the right anterior talofibular ligament; and an open primary repair of the right peroneus brevis tendon. Claimant remained off work from May 27, 2011 until August 8, 2011, a period of 10 4/7<sup>th</sup> weeks.<sup>3</sup>

Post-operatively Claimant underwent physical therapy. During February 2012, Claimant also underwent a post-operative right ankle MRI to evaluate new *medial* right ankle pain. The MRI demonstrated increased swelling of the right lower extremity, but otherwise no new changes. Due to the new *medial* tendon ankle pain Claimant received a cortisone injection into the right ankle. On February 14, 2012, Dr. Paranjpe recommended Claimant resume his home exercise program, and return as needed for further care or orthopedic right knee treatment.<sup>4</sup>

4. As of hearing, Claimant continues to complain of right ankle morning stiffness, and continues to experience right ankle swelling. Claimant takes Tylenol as needed for discomfort. He no longer plays basketball, but will use a cart to play Par 3 golf. Claimant testified he no longer cuts grass at home, and walking on uneven ground produces discomfort.

5. On November 28, 2011, orthopedic foot/ankle surgeon, Dr. Schmidt, conducted a medical record review for Employer and answered a series of questions posed by Employer's counsel. Specifically, Dr. Schmidt was asked if the work injury of November 12, 2009 was a prevailing factor in Claimant's right foot condition and need for surgery. Dr Schmidt replied as follows:

It is noted that Mr. Ambrozetes did complain of pain in his ankle from the time of his injury however never was documented in

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<sup>3</sup> At the start of hearing Claimant indicated the TTD period to total 9 3/7<sup>th</sup> weeks, but the actual TTD period is 10 4/7<sup>th</sup> weeks.

<sup>4</sup> During his care with Dr. Paranjpe, Claimant was also being treated by an orthopedic partner of Dr. Paranjpe for unrelated long standing right knee pain.

having instability. His continuing complaints of pain[s] subsequently led to an MRI evaluation that revealed a peroneal tendon tear and anterior talofibular ligament repair. In review of the MRI, it reveals that there is some thickening of the capsule laterally and Dr. Paranjpe did debride the anterior recess arthroscopically. Therefore, even though he did not have frank instability, he seemed to have anterior lateral impingement and a peroneal tendon tear which led to his continued painful condition necessitating the treatment he required.

Dr. Schmidt answered that the medical care provided Claimant was reasonable and necessary to treat his November 12, 2009 injury, and that Claimant was at maximum medical improvement.

On February 24, 2012, after reviewing Claimant's deposition, Dr. Schmidt opined to Employer that Claimant had not suffered from chronic ankle instability. Further, Dr. Schmidt opined, there were no complaints of instability in Claimant's medical record and "his initial injury would have to be one where he completely disrupted his lateral ankle complex . . . it does not seem that this was so." Finally, Dr. Schmidt opined his initial opinion expressed in his report remained unchanged.

On May 23, 2012, Dr. Schmidt was asked to clarify his February 2012 response and indicated the February response was concerning whether the injury pre-dated the November 12, 2009 work injury. Dr. Schmidt indicated as follows:

. . .Therefore, I did not feel that chronic pre-existing instability was the prevailing condition. He demonstrated anterior talofibular ligament tears on MRI and his treatment was reasonable and appropriate. Therefore, the opinion I expressed that his treatment was reasonable and necessary for the injury still stands. I did not feel that he had a pre-existing problem in relation to this injury.

Dr. Schmidt examined Claimant at his request on October 13, 2013. At this visit, Claimant was seeking additional surgical intervention. Following his examination, Dr. Schmidt told Claimant he did not think surgical intervention would help him.<sup>5</sup>

6. Claimant was examined at his request by Dr. Shuter, a neurologist on November 29, 2011. Following his review of Claimant's medical history and his physical examination, Dr. Shuter opined that due to the November 12, 2009 work injury Claimant sustained a tear of his right anterior talofibular ligament and split of his peroneal brevis tendon that required surgical repair. Dr. Shuter found the November 12, 2009 work injury to be the prevailing factor in Claimant's need for right ankle medical treatment. Dr. Shuter rated Claimant's disability to be 35% PPD referable to the right ankle. During deposition testimony, Dr. Shuter indicated symptoms that are indicators to performing anterior fibular ligament repair include continued pain in the ligament area when the tear is present on MRI, swelling, and ankle instability.

7. Claimant was examined at his request by Dr. Woiteshek, board certified orthopedic surgeon, on June 30, 2104. Following his review of Claimant's medical history and his physical

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<sup>5</sup> Dr. Schmidt was not deposed by either party.

examination, Dr. Woiteshek noted the following: pain and tenderness to deep palpation over the entire right ankle; slight swelling over the right ankle; slightly positive anterior drawer test; positive talar tilt test; and decreased right ankle range of motion. Dr. Woiteshek diagnosed traumatic internal derangement of the right ankle with anterior talofibular ligament tear and longitudinal split of the peroneal tendon of the right ankle. Dr. Woiteshek opined the November 12, 2009 injury was the prevailing factor in causing Claimant's diagnosis. Dr. Woiteshek rated the injury at 35% PPD referable to the right ankle. Dr. Woiteshek further opined all medical care provided Claimant was reasonable and medically necessary to cure and relieve him from the effects of the November 12, 2009 injury.

Finally, Dr. Woiteshek disagreed with the opinion expressed by Dr. Krause (see below) regarding the tears found on the March 2, 2011 MRI, and its relation to the November 12, 2009 work related injury. Dr. Woiteshek opined the November 12, 2009 work injury did not produce an ankle sprain/contusion, rather, the injury was the prevailing factor in causing the ankle tears. Dr. Woiteshek testified the indicators for performing surgery for this type injury are being "convinced that there's enough ligamentous instability in the ankle, and that's usually based on the history and your physical examination, to cause the patient's symptomatology, which is usually - - it can be a combination of pain and giving way sometimes it can just be pain." (Exhibit I, pg. 28) Further Dr. Woiteshek noted "if you had chronic pain and it's located laterally and then they have a positive MRI scan, you'd be a little more inclined to do the surgery." (Exhibit I, pg. 31).

8. Claimant was examined at the request of Employer by Dr. Krause, a board certified orthopedic surgeon, on September 12, 2012. Following his review of Claimant's medical history and his physical examination, Dr. Krause diagnosed a right ankle sprain, and history of right peroneus brevis tear with post-surgical repair. Dr. Krause opined to repair an anterior talofibular ligament, there must be ankle instability, and as Claimant did not present with ankle instability the surgery performed to repair the ATFL was not warranted. Dr. Krause opined Claimant did have a "clear tear of his peroneus brevis," but did not believe the November 12, 2009 injury was the prevailing factor due to Claimant's history and lack of medical treatment "for many months" following the injury. Dr. Krause opined the treatment provided by Dr. Paranjpe was reasonable and necessary to cure and relive Claimant, but the work injury of November 12, 2009 was not the prevailing factor in the need for this treatment. Finally, Dr. Krause provided a 0% PPD rating for the November 12, 2009 injury.

During deposition testimony, Dr. Krause testified Claimant's tendon could not have occurred on November 12, 2009, because "people who tear their peroneal tendons don't keep working and don't have no symptoms a week later and no - - no physical findings a week later. . ." (Exhibit A, pg. 52) Dr. Krause further testified an ATFL tear is an ankle sprain for everybody but a radiologist, but acknowledged Claimant had suffered an ankle sprain that had resolved in very little time except for his complaints. (Exhibit A, pg. 52, 55). Finally, Dr. Krause acknowledged that an ankle sprain is an ATFL tear. (Exhibit A, pg. 69).

#### **RULINGS OF LAW WITH SUPPLEMENTAL FINDINGS**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

### **Issues relating to medical causation**

Claimant bears the burden of proving the essential elements of his claim by producing evidence from which it may be reasonably found that an injury resulted from the cause for which the employer would be liable. *Griggs v. A.B. Chance Co.*, 503 S.W.2d 697 (Mo.App. 1973). Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds).

All physicians involved in this case agree Claimant suffered a right ankle sprain on November 12, 2009, however, disagreement among the experts involve *what degree of care* was necessary to cure and relieve Claimant from his ankle sprain. Dr. Krause takes great exception to the surgical care that was provided to Claimant, insisting surgical care was not required as Claimant's sprain resolved within a week, although Dr. Krause acknowledges Claimant continued to voice complaints of pain up to the date of surgery. Dr. Krause insists ankle instability must be present before contemplating surgery to repair any tear. The other medical experts in this case disagree. More importantly, Employer had the opportunity to assume control of the medical in this case but failed to do so. If Dr. Krause had been the treating physician in this case the surgical outcome might not have been offered, but Employer gave up control and Claimant was free to seek medical care on his own.

I find the opinions of Dr. Schmidt, Dr. Shuter, and Dr. Woiteshek to be persuasive, and I find Claimant has met his burden to establish medical causation.

### **Issues related to past medical expenses**

Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the work injury. Additionally, §287.140.3 RSMo., provides that all medical fees and charges under this section shall be fair and reasonable. A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo.banc 1989).

Claimant seeks reimbursement in the amount of \$29,148.70 in medical charges incurred and not paid by Employer.<sup>6</sup> The presented bills were supported by the appropriate medical records and Claimant's testimony. Employer did not challenge the reasonableness of the medical bills. Claimant's injury is compensable, his medical care flowed from his injury, and he has met his burden of evidence. Accordingly, I find Employer liable for \$29,148.70 in medical expenses accrued by Claimant in an attempt to cure and relieve the effects of his work related injury.

### **Issues related to past TTD benefits**

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<sup>6</sup> See corrected Exhibit 5.

TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Employer has paid no TTD benefits to date. Claimant seeks TTD benefits covering a period from May 27, 2011 (the date of surgery) until August 8, 2011, a period of 10 4/7<sup>th</sup> weeks. The medical record in evidence supports these dates of total disability. Accordingly, I find Employer is liable for \$5,275.04 in TTD benefits.

#### **Issues related to Employer's liability for PPD benefits**

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds). Based on the testimony and evidence presented, I find Claimant is entitled to receive 20% PPD referable to his right ankle, for which Employer is liable.

#### **Issues related to attorney fees & costs under §287.560**

Claimant seeks costs and attorneys fees under §287.560 RSMo. Section 287.560 RSMO., provides in part:

if the division or commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them.

In the instant case, Employer had reasonable grounds to deny this case, and two medical opinions, Barnes Care and Dr. Krause, provided a right to defend its denial. Claimant's request for cost and attorneys fees under §287.560 is denied.

### **CONCLUSION**

In summary, Claimant sustained an accident to his right ankle that arose out of and in the course and scope of his employment with Employer. Claimant is awarded benefits as outlined in this award. Claimant's attorney is entitled to a 25% lien.

Made by: \_\_\_\_\_  
LINDA J. WENMAN  
*Administrative Law Judge*  
*Division of Workers' Compensation*