

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

Injury No.: 01-089498

MFD No.: 01-01031

Employee: Caleb Barclay
Employer: Apted Hulling, Inc.
Insurer: American Compensation Insurance Co.
c/o RTW
Health Care Provider: Radiologic Imaging Consultants
Date of Accident: August 14, 2001
Place and County of Accident: St. Charles County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 5, 2005. The award and decision of Administrative Law Judge Leslie E. H. Brown, issued October 5, 2005, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of 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 24th day of February 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Caleb Barclay

Injury No. 01-089498

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Employer: Apted Hulling, Inc.

Add. Party: ---

Insurer: American Compensation Insurance Co. c/o RTW

Hearing Date: 9/26/05

Checked by: LB:bf (by df)

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: 8/14/01
5. State location where accident occurred or occupational disease was contracted: St. Charles 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:
Employee was in company golf cart on his way to a wood cutting assignment and the golf cart turned over.
12. Did accident or occupational disease cause death? No Date of death? ---
13. Part(s) of body injured by accident or occupational disease: Left leg at 160 week level
14. Nature and extent of any permanent disability: 15% left leg (160 week level)
15. Compensation paid to-date for temporary disability: disputed
16. Value necessary medical aid paid to date by employer/insurer? disputed
17. Value necessary medical aid not furnished by employer/insurer? \$0.00
18. Employee's average weekly wages: ---
19. Weekly compensation rate: \$233.33/\$233.33
20. Method wages computation: By agreement of the claimant and employer/insurer.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$0.00

29 weeks of temporary total disability (or temporary partial disability)..... See Stipulation for
Compromise Settlement
document

15% left leg (160 week level)permanent partial disability from Employer.....See Stipulation for
Compromise Settlement
document

Out of pocket expenses.....See Stipulation for
Compromise Settlement
document

22. Second Injury Fund liability: n/a

TOTAL: \$13,656.17

23. Future requirements awarded: None

Said payments to begin as of date of Award 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 hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Richard A. Gartner, Attorney for Claimant

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Caleb Barclay

Injury No: 01-089498

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Dependents:

Employer: Apted Hulling, Inc.

Add. Party: ---

Insurer: American Compensation Insurance Co. c/o RTW

Checked by: LB:bf (by df)

FINDINGS OF FACTS AND RULINGS OF LAW

This is a hearing in Injury No. 01-089498. The claimant, Caleb Barclay, appears in person and by counsel,

Attorney Richard A. Gartner. The employer/insurer, Apted Hulling Inc./American Compensation Insurance Co. c/o RTW Inc., appear by and through counsel, Attorney Brian J. Dean. Radiologic Imaging Consultants did not appear at this hearing, and was sent notice of this hearing by certified mail at the last known address.

The parties, the claimant and the employer/insurer entered into certain stipulations, and those are reflected in a Stipulation for Compromise Settlement document entered into evidence by the parties. The parties entered into agreements as to the issues and evidence to be presented in this hearing.

ISSUE:

1. Medical fee dispute (direct pay matter filed by Radiologic Imaging Consultants)

EXHIBITS:

The following exhibits were admitted without objection:

Claimant's Exhibits:

No. A: Independent medical examination report by Dr. David Anslinger

No. B: Certified mail receipt of notice of this hearing sent to Radiologic Imaging Consultants at their last known address from the Division's file

No. C: Notice of Services Provided and Request for Direct Payment Lien of Radiologic Imaging Consultants, dated June 13, 2003, and filed with the Division on June 16, 2003 indicating a total bill of \$192.96

Joint Exhibit:

Roman Numeral I: Stipulation for Compromise Settlement which has been executed by Mr. Barclay (the claimant), Attorney for Claimant Richard Gartner, and Attorney for Employer/Insurer Brian Dean as a resolution of this case by a compromise

Caleb Barclay, the claimant, testified that he has seen the Stipulation for Compromise Settlement (Roman Numeral I) and has gone over it with his attorney. This occurred probably about a month ago, the claimant stated. Barclay agreed that the reason they have not been able to go forward with the settlement with the employer/insurer is because of a medical lien, the issue before the court today. Barclay agreed that he has been informed by his attorney that his attorney has attempted to contact Radiologic Imaging Consultants on numerous occasions and they have failed to respond to the Claimant's Attorney's inquiries.

Barclay stated that his answers reflected in the Stipulation for Compromise Settlement would be the same as he had answered when he signed the settlement document.

Documentary evidence presented in this hearing, in addition to the Stipulation for Compromise Settlement, consisted of an Independent Medical Examination report by a Dr. David Anslinger, M.D. (No. A) concerning evaluation of Caleb Barclay for injuries sustained in a work related accident on 08/14/01. The doctor discussed the 08/14/01 work related accident and briefly discussed the treatment the claimant received, including that x-rays had been taken at St. Joseph's Hospital; in his discussion under the section "X-Ray Review:", Dr. Anslinger wrote: "8/14/01: Left proximal tibial fracture with associated fibula fracture". Dr. Anslinger's diagnosis for the 08/14/01 work related injury was – a left proximal tibial plateau fracture with associated fibula fracture with open reduction and internal fixation of left tibial plateau fracture and fibula fracture performed on 08/15/01. Dr. Anslinger opined that it was his "medical and neurological opinion that within a reasonable degree of medical certainty that this patient's knee injury was sustained while at work and is a substantial factor in his disability". The doctor wrote that Barclay was at maximum medical improvement for the 08/14/01 work related injury, and assessed permanent partial disability for the injury of – 10% permanent partial disability of the left lower extremity.

Another document in evidence was the lien filed by Radiologic Imaging Consultants (No. C) which reflected services of up to possibly six (6) x-rays being performed on patient Caleb Barclay at St. Joseph's Hospital on 08/14/01 and on 08/15/01, and reflecting a total bill of \$192.96.

In evidence was the original Certified Mail Receipt (No. B) reflecting that Radiologic Imaging Consultants was sent

notice of the 09/26/05 hearing at the Division of Workers' Compensation by certified mail at the last known address reflected in the Division of Workers' Compensation's file. Radiologic Imaging Consultants was thrice called at the beginning of this hearing and did not answer, was not present, and made no effort to respond about the hearing setting.

No other documentary evidence was presented in the hearing (i.e. no medical records of the treatment rendered for the 08/14/01 work related injury).

"In *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. banc 1989), our Supreme Court stated that "when [employee] testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the *professional services rendered as shown by the medical records in evidence*, a sufficient factual basis exists for the commission to award compensation." *Id.* at 111-12[7] (emphasis added)." *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo.App. E.D. 1994)

It is found that with no treatment records for the 08/14/01 work related injury in evidence, a determination as to the number of x-rays performed on 08/14/01 and if any were performed on 08/15/01 would be speculative; Dr. Anslinger makes reference to x-rays being performed, but the indication in the "X-Ray Review:" section of his report is possibly a review of only one x-ray. It is found that there is an insufficient basis upon which to award compensation for the bills listed in the lien filed by Radiologic Imaging Consultants. Consequently compensation for the Radiologic Imaging Consultants bill is denied.

It is further found that there is sufficient competent evidence to support approval of the settlement between the claimant and the employer/insurer in this case for the 08/14/01 work related injury, and the Stipulation for Compromise Settlement will be approved.

Date: October 5, 2005

Made by: /s/ LESLIE E. H. BROWN
LESLIE E. H. BROWN
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
Patricia "Pat" Secrest
Director
Division of Workers' Compensation