

TEMPORARY OR PARTIAL AWARD
(Modifying Award and Decision of Administrative Law Judge)

Injury No.: 05-100969

Employee: Michael Betz
Employer: City of St. Louis
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: September 29, 2005
Place and County of Accident: City of St. Louis

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 in this case is not supported by competent and substantial evidence. Pursuant to section 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge dated August 3, 2006.

The stipulation of issues for trial, with which the parties' counsel concurred, is re-printed in its entirety:

THE COURT: Excuse me. Let me correct the statement of issues. Again they are identical in both cases as follows: Number one, medical causation, maximum medical improvement and in the event, that is, the claimant is found to be at maximum medical improvement, then employer places in issue a second issue and that would be the nature and extent of permanent partial disability.

The issues stipulated for trial limit the actions the administrative law judge and Commission can take.

8 CSR 50-2.010(14) provides that "prior to hearing, the parties shall stipulate uncontested facts and present evidence only on contested issues." *Boyer v. Nat'l Express Co., Inc.*, 49 S.W.3d 700, 705 (Mo.App. 2001). "A stipulation should be interpreted in view of the result which the parties were attempting to accomplish." *Id.*

Aldridge v. S. Mo. Gas Co., 131 S.W.3d 876, 885 (Mo. App. 2004). The Commission acts without or in excess of its powers if it determines issues not stipulated to be tried. *Id.*

We affirm the finding of the administrative law judge that employee offered no medical evidence suggesting a resumption of treatment is necessary and we affirm the denial of medical treatment.

The administrative law judge's conclusion is re-printed in its entirety:

Accordingly, on the basis of the substantial and competent evidence contained within the whole record, Claimant is found, in the second case, to have attained maximum medical improvement and sustained a two and one-half percent PPD of the left knee.

There is no medical evidence in the record to show that employee has attained maximum medical improvement. To the contrary, the last medical record in evidence is dated October 15, 2006, and states, "no permanency expected." If the provider believed employee had achieved maximum medical improvement, it seems likely a final opinion on permanency would have been recorded. The administrative law judge's conclusion that employee has attained maximum medical improvement is not supported by competent and substantial evidence. It is erroneous to infer that employee is at maximum medical improvement simply because he failed to carry his burden of proving he is need of additional medical treatment. Employer was the party alleging employee was at maximum medical improvement. Employer offered no evidence to support the allegation. We reverse the finding of the administrative law judge that employee has attained maximum medical improvement.

Neither party presented any medical evidence to establish the permanent disability employee sustained, if any, as a result of the work accident so the administrative law judge's permanent partial disability finding is unsupported. The parties stipulated that the extent of permanent partial disability was to be ruled only if there was a finding of maximum medical improvement. Because the record does not support a finding that employee has attained maximum medical improvement, it is premature to consider the issue of permanent partial disability. We set aside the administrative law judge's finding and conclusion regarding permanent partial disability.

Because the award does not dispose of all issues between the parties, we issue a temporary or partial award pursuant to § 287.510 RSMo. This temporary or partial award is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued August 3, 2006, is attached and incorporated by this reference to the extent it is not inconsistent with our findings and conclusions herein.

Given at Jefferson City, State of Missouri, this 2nd day of February 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Michael Betz

Injury No.: 05-100969

Dependents: N/A

Before the

Division of Workers'

Employer: City of St. Louis

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund

Relations of Missouri
Jefferson City, Missouri

Insurer: Self-Insured

Hearing Date: May 24, 2006

Checked by: JED:tr

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: September 29, 2005
5. State location where accident occurred or occupational disease was contracted: City of St. Louis
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:
Policeman fell during foot pursuit of suspect.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left knee, left hand
14. Nature and extent of any permanent disability: 2 ½% permanent partial disability of left knee
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$709.00

Employee: Michael Betz

Injury No.: 05-100969

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$505.49/\$365.08
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

4 weeks of permanent partial disability from Employer

\$1,460.32

22. Second Injury Fund liability: No

TOTAL: \$1,460.32

23. Future requirements awarded: None

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 hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

John Beseau

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Michael Betz

Injury No.: 05-100969

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: City of St. Louis

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self-Insured

Checked by: JED:tr

This case involves two separate Claims for Compensation resulting to Claimant with the reported accident dates of February 22, 2005 (#05-138001) and September 29, 2005 (#05-100969). These cases may be referred to hereafter as the "first" and "second" cases, respectively. Employer admits Claimant was employed on said dates and that any liability is fully self-insured. The Second Injury Fund is not a party to these claims. Both parties are represented by counsel. Separate awards issue on each Claim.

Issues for Trial

Both Cases

1. medical causation;
2. nature and extent of permanent disability.

FINDINGS OF FACT

Claimant's Testimony

Claimant testified that he is a police officer for the City of St. Louis. He was commissioned in 2004. Claimant testified that he was engaged in a foot pursuit of a suspect on February 22, 2005 when he fell off a two foot drop-off. He struck his left knee when he fell. He reported the injury that day but did not seek any treatment. Claimant never received treatment for his contusions.

Six months later, on September 29, 2005, Claimant sustained new injuries. Again, Claimant was on foot pursuit of a suspect when he tripped and fell. Claimant struck his left knee and left hand. Claimant sought treatment the next day at BarnesCare. His knee was diagnosed as contusion and his hand was diagnosed with abrasion only.

Claimant apparently followed up five days later. He complained of left knee soreness, popping and increasing discomfort when seated. On October 10, 2005 the left knee swelling had decreased but he still had discomfort with [extended] sitting. He was prescribed ibuprofen and attended two physical therapy sessions.

Claimant stated that moving and stretching relieves his symptoms. Claimant had no swelling at trial. Claimant denied any other injury and agreed on cross-examination that he had no permanent symptoms from the first accident. Claimant returned to work and work regular hours. No restrictions on duty were mentioned.

Treatment records from BarnesCare reflect swelling and discomfort with sitting for extended period and with walking quickly or jogging. Claimant apparently was on vacation during the week(s) following the second injury. This time off is analogous to temporary total disability but no TTD benefits are sought. Claimant was returned to work without restrictions and the therapist anticipated no permanency.

Claimant continues as of trial to complain of mild knee irritation. He wants additional treatment for his knee symptoms. However, Claimant offered no medical evidence suggesting a resumption of treatment is necessary. His request for treatment is traced to residual symptoms which is more consistent with minimal permanent partial disability of the left knee.

Conclusion

Accordingly, on the basis of the substantial and competent evidence contained within the whole record, Claimant is found, in the second case, to have attained maximum medical improvement and sustained a two and one-half percent PPD of the left knee.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Employee: Michael Betz

Injury No.:

05-100969