

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

Injury No.: 07-069588

Employee: Craig Bonar
Employer: ATK Alliant Techsystems
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 22, 2010. The award and decision of Administrative Law Judge Carl Mueller, issued July 22, 2010, 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 January 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Craig Bonar Injury No: 07-069588
Dependents: N/A
Employer: ATK Alliant Techsystems
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: State Treasurer as Custodian of the Second Injury Fund
Date of Accident: June 30, 2007
Hearing Date: June 28, 2010 Checked by: RCM/rm

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: June 30, 2007
5. State location where accident occurred or occupational disease was contracted: Independence, Jackson County, Missouri
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 fell injuring his right foot and ankle and due to overuse, developed problems with his left lower extremity.
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: Right and Left Lower Extremities
14. Nature and extent of any permanent disability: Twenty-three and one-half percent (23½ %) to the right lower extremity at the 155 week level and twenty percent (20%) to the left lower extremity at the 155 week level.
15. Compensation paid to-date for temporary disability: \$7,600.35 at \$506.69 per week for 15 weeks.

- 16. Value necessary medical aid paid to date by employer/insurer? \$22,607.90. Employer agrees to pay all valid and authorized medical bills.
- 17. Value necessary medical aid not furnished by employer/insurer? \$57,416.34 (\$49,473.59 paid by Employee's group insurance; \$448.06 incurred by Employee in out-of-pocket medical expenses and \$7,494.69 still due and owing to healthcare providers.)
- 18. Employee's average weekly wages: \$1,025.41 per week.
- 19. Weekly compensation rate: \$683.61 for temporary disability, and \$376.55 for permanent partial disability
- 20. Method wages computation: Agreement of the parties.

21. Amount of compensation payable:

Medical Expenses

Left ankle treatment (paid by group health)	\$49,473.59 ¹
Left ankle treatment (unpaid or out-of-pocket)	\$7,942.75
Right ankle treatment	\$22,607.90
Total Medical Already Incurred	\$80,024.24
Less credit for expenses already paid	(\$22,607.90)
Total Medical Owing.....	<u>\$57,416.34</u>

Temporary Disability

63.1428 weeks (7-1-07 to 10-13-07) and (8-4-08 to 7-7-09).....	\$43,165.05
Less credit for benefits already paid	\$7,600.35
Total TTD Owing.....	<u>\$35,564.70²</u>

Permanent Partial Disability

23½% disability to the right lower extremity at the 155 week level (36.425 weeks) x \$376.55 weekly	\$13,715.83
20% disability to the left lower extremity at the 155 week level (31 weeks) x \$376.55 weekly	\$11,673.05
Total PPD Owing	<u>\$25,388.88</u>
TOTAL AWARD	<u>\$118,369.92</u>

- 22. Second Injury Fund liability: Not addressed at this hearing.
- 23. Future requirements awarded: AFO Brace for the left ankle and treatment to both ankles if the hardware implanted, as a result of this injury, requires further medical treatment pursuant to §287.140.8 RSMo (2006)

Said payments to begin as of date of this 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 twenty-five percent (25%) lien in favor of Frank D. Eppright, Attorney, for reasonable and necessary attorney's fees pursuant to MO.REV.STAT. §287.260.1. (2006). The lien totals \$17,224.08, which is equal to 25% of the total of the TTD, PPD, and the unpaid expenses for Mr. Bonar's left ankle treatment.

¹ Employer's attorney advised at hearing that it is self-insured for group insurance and that if Mr. Bonar's medical treatment were found to be compensable on the left lower extremity, that this amount paid simply would be retitled "workers' compensation" and shifted over to the workers' compensation department. Claimant's counsel noted in a post hearing brief that he specifically asks for no fee on this amount.

² \$2,635.80 for 15 weeks of underpaid TTD (\$683.61- \$506.69 = \$176.92) from July 1 through October 13, 2007, plus \$32,910.90 in TTD for the 48 1/7 weeks from August 4, 2008 through July 7, 2009 at \$683.61 per week.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Craig Bonar Injury No: 07-069588
Dependents: N/A
Employer: ATK Alliant Techsystems
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: State Treasurer as Custodian of the Second Injury Fund
Date of Accident: June 30, 2007
Hearing Date: June 28, 2010 Checked by: RCM/rm

On June 28, 2010 the employee and employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Mr. Craig Bonar, appeared in person and with counsel, Mark E. Kolich, who handled this hearing in lieu of Mr. Bonar’s lead attorney, Frank D. Eppright, who was unable to attend the hearing. The Employer, ATK Alliant Techsystems, appeared through counsel, Michelle Daum Haskins. While the employee also filed a Claim for Compensation against the Second Injury Fund, it did not appear as Assistant Attorney General Andrew Dickson advised by letter dated May 3, 2010 that the Fund agreed to a separate hearing on the Claim against it after this hearing was complete.

The issues the parties requested the Division to determine were whether Mr. Bonar’s June 30, 2007 accident caused any disability to his left ankle, and, if so, the extent of such disability; whether he suffered any disability to his right ankle, and, if so, the extent of such disability; whether the medical expenses incurred for his left ankle treatment should be reimbursed by the employer; whether he qualified for additional temporary total disability benefits; and, whether he requires additional treatment. For the reasons noted below, I find that Mr. Bonar’s accident resulted in 20% disability to his left ankle, and 23½% to his right ankle; that the medical bills incurred on the left ankle must be paid by the employer; that Mr. Bonar qualified for temporary total disability benefits while he received treatment on his left ankle; and, that future medical be awarded to Mr. Bonar.

STIPULATIONS

The parties stipulated that:

1. On or about June 30, 2007 (the injury date), ATK Alliant Techsystems (hereinafter “ATK”), was an Employer operating under and subject to Missouri’s Workers’ Compensation law insured by the Insurance Company of the State of Pennsylvania;

2. Mr. Craig Bonar was its employee, working subject to the law in Independence, Jackson County, Missouri;
3. Mr. Bonar sustained an accident arising out of and in the course of employment as to his right ankle; ATK disputes the compensability of his left ankle injury;
4. Mr. Bonar both notified ATK of his accident and filed his claim within the time allowed by law;
5. Mr. Bonar earned a \$1,025.41 average weekly wage resulting in a weekly compensation rate of \$683.61 for temporary total and \$376.55 for permanent partial disability compensation;
6. ATK paid temporary total disability (“TTD”) compensation at a weekly rate of \$506.69 for the 15 week period from July 1, 2007 through October 13, 2007 for compensation totaling \$7,600.35. ATK stipulates that it underpaid TTD in the amount of \$2,653.80 and agrees to pay the employee this TTD;
7. ATK provided Mr. Bonar with medical care costing \$22,607.90; and,
8. Medical expenses for treatment of Mr. Bonar’s left ankle totaled \$49,473.59; ATK stipulates that it would not seek reimbursement for these funds whether or not the employee’s left ankle disability is found to be compensable.

ISSUES

The parties requested the Division to determine the following:

1. Whether Mr. Bonar is entitled to temporary total disability benefits for the period from August 4, 2008 through July 7, 2009 representing 48 1/7 weeks for compensation totaling \$32,910.94?
2. Whether ATK must reimburse the employee for medical expenses totaling \$7,942.75?
3. Whether ATK must provide the employee with additional medical care?
4. Whether Mr. Bonar suffered any disability and, if so, the nature and extent of the Employee's disability?

5. Whether the accident caused the disability the employee claims for his left ankle?

FINDINGS OF FACT

Mr. Bonar testified on his own behalf and presented the following exhibits, all of which were admitted into evidence without objection:

- A – 10/20/09 Report of Dr. Douglas M. Rope (11 pages)
- B – 01/18/10 Addendum Report of Dr. Douglas M. Rope (1 page)
- C – Curriculum Vitae of Dr. Douglas M. Rope (2 pages)
- D – Medical Records, Kansas University Physicians, Inc. (32 pages)
- E – Medical Records of University of Kansas Hospital (50 pages)
- F – Medical Records of Hanger Orthotics & Prosthetics (24 pages)
- G – Medical Records of Select Physical Therapy (115 pages)
- H – Medical Records of University Hospital & Clinics (52 pages)
- I – Medical Records of St. Joseph Medical Center (47 pages)
- J – Medical Records of Fitzgibbon Hospital (13 pages)
- K – Medical Records of Centerpoint Medical Center (26 pages)
- L – Medical Records of Columbia Orthopaedic Group (11 pages)
- M – Medical Records of Research Medical Center (57 pages)
- N – Medical Records of Rusk Rehabilitation (360 pages)
- O – Medical Billing Summary (2 pages)
- P – Medical Billing of Select Physical Therapy (4 pages)
- Q – Medical Billing of Alliance Radiology (2 pages)
- R – Medical Billing of Kansas University Physicians (10 pages)
- S – Medical Billing of LabCorp (8 pages)
- T – Medical Billing of Hanger Prosthetics & Orthotics (6 pages)
- U – Medical Billing of Physicians Reference Laboratory (3 pages)
- V – Medical Billing of CareCentrix (13 pages)
- W – Medical Billing of Walgreens (7 pages)
- X – Medical Billing of Centerpoint Medical Center (5 pages)
- Y – Medical Billing of University of Kansas Hospital (26 pages)
- Z – Reports of Dr. Greg Horton (2 pages)
- AA – Current Complaints (1 page)

Although the employer did not call any witnesses, it did present as Exhibit 1 the four page March 31, 2010 medical report of Edward J. Prostic, MD which was admitted into evidence without objection.

Based upon the testimony of Mr. Bonar and a review of the above exhibits, I make the following findings.

Mr. Craig Bonar is 38 years old and is single and has no dependents. ATK employed Mr. Bonar beginning February 13, 2006 in Independence, Jackson County, Missouri. The Employee was injured on June 30, 2007 while performing his job duties as a machine specialist. The injury

occurred when Mr. Bonar caught his right foot while descending a mobile staircase and twisted and wrenched his right ankle and right lower extremity. He was seen at the emergency department of Centerpoint Medical Center where x-rays revealed a non-displaced spiral fracture of the distal right fibular shaft as well as a smaller fracture at the base of the medial malleolus. He was given medication and a short leg cast. His care was referred to Dr. John M. Sojka, an orthopedic surgeon, at KU Medical Center. On July 10, 2007, Dr. Sojka performed surgery on the Employee in the form of an operative reduction with hardware fixation. The fibular fracture was fixed using a tubular plate affixed to the fibula with multiple screws as well as a second screw approximately 45 mm long inserted into the fractured medial malleolus.

Following the surgery, the Employee went through physical therapy and was using crutches as late as August 31, 2007; he was still instructed to non-weight bearing on his right ankle. On September 18, 2007 he was using a cam walking boot instead of crutches. On September 24, 2007 he started walking using normal shoes but was noted to be slightly antalgic. In his office note of September 27, 2007, Dr. Sojka noted the Employee's right leg needed to be strengthened even more because he had relied on it more because of his past injuries to his left leg. After more physical therapy, the Employee returned to work around November 12, 2007. On November 26, 2007 Dr. Sojka noted the Employee was walking with slight antalgia but thought it was secondary to his previous left lower extremity injuries. Following his return to work the Employee began having pain in both his right and left ankle. Upon seeing Dr. Sojka on May 5, 2008, the Employee was noted to have persistent post traumatic pain in the right ankle. He also was noted to have persistent antalgia. Dr. Sojka noted that the Employee should purchase an off-the-shelf sleeve for his right ankle for support for increased activity. He also recommended non steroidal anti-inflammatories on an as needed basis. On June 19, 2008, Dr. Sojka rated Mr. Bonar's disability at seven percent (7%) of the right lower extremity at the one hundred fifty (150) week level. He also opined that he did not anticipate the need for future surgical treatment. *See*, Claimant's Exhibit D at 17-18.

In July, 2008 the Employee was having severe pain in his left ankle. He saw Dr. Sojka on August 4, 2008 complaining of left ankle pain. The pain was on weight bearing beneath the left fibula. Dr. Sojka's examination revealed a post traumatic deformity, left hindfoot and ankle with post-traumatic arthritis, left subtalar joint. Dr. Sojka recommended a left ankle foot orthopedic device ("AFO") and referred him to Dr. Greg Horton saying:

It would be my recommendation to have Dr. Horton address his posttraumatic deformity as **he is our foot and ankle specialist.**
(Emphasis added.)

Id. at 16.

Dr. Horton noted the fracture of the right ankle had caused the Employee to put increased weight on the left leg which resulted in sharp pain in every step the Employee took. Dr. Horton also made note of the AFO brace as well as a heel lift as a result of an old leg trauma. Dr. Horton examined the Employee, took him off work and recommended a CT scan of the left lower extremity which was done on September 18, 2009. Based on this CT scan, Dr. Horton performed surgery on the Employee on October 17, 2008. The surgery included a partial excision of the talus bone at the top of the foot comprising the lower portion of the ankle joint;

partial excision of the navicular bone adjacent to the talus on the medial side of the foot; debridement of the distal fibula due to the presence of scar tissue at that site; removal of an anterior osteophyte of the tibia; removal of bone from the navicular base; and bone removal for reconfiguration of the calcaneus with 2 bone screw fixations.

Post surgery, Mr. Bonar developed an infection in the left lower extremity which complicated recovery and required several surgeries.

Dr. Horton released the Employee on April 7, 2009 with the following statement:

Obviously he (the Employee) has some underlying and significant pathology of the left ankle; however, it is certainly reasonable (to a reasonable degree of medical certainty) that the left ankle problem was exacerbated by or the need for treatment was accelerated from his occupational injury of 6/30/07. I realize this isn't going to be a terribly popular opinion but based on the records that I have reviewed and the information provided by Mr. Bonar, that's the opinion that I have come to.

See, Claimant's Exhibit Z at 2.

Later, on July 7, 2009, Dr. Horton noted that the (left) AFO brace was helping Mr. Bonar and that his activities could be advanced with the AFO brace. Dr. Horton added:

Evidently he has had a hearing regarding the issue of whether this is work related or not. I had provided a detailed dictation previously. I now find out this is a Missouri Work Comp, and the semantics of the language are inadequate to fulfill the requirement, despite their intended spirit. **Indeed, I do believe that the prevailing factor and his need for the treatment that he has received for his left leg was the occupational injury that he sustained in 6/07.** I think once he has an FCE then he could potentially be released at maximum medical improvement with permanent restrictions. (Emphasis added)

Id. at 1.

The Employee freely admitted that he had previous injuries to both legs. The first one was a severe injury to the left leg at age 13 months from a lawnmower. He had sixteen surgeries on his left leg. Although he wore a brace, he played little league baseball and "ran fast". In a "field day" at school he completed the one-mile run event and qualified for a national physical fitness award. Mr. Bonar discontinued using any type of ankle brace when he was sixteen or seventeen years old. The Employee played high school golf and walked the course whenever he played. In 1993 he had an osteotomy of the left fibula with placement of fixation hardware secured by multiple screws to connect his valgus deformity. The Employee's left leg was shorter than the right leg and he underwent additional surgery in 1996 to remove the growth plate from his right leg to prevent further growth and to minimize any further leg length discrepancy between the right and left leg.

Mr. Bonar received no substantial treatment for his right or left leg and was progressing reasonably well with only using a lift in his left shoe of about $\frac{3}{4}$ inches to even out the difference between his right and left leg. He, according to his testimony and medical records, was able to work without restrictions before his 2007 injury to his lower extremities and to also engage in recreational activities.

In addition to Dr. Horton's reports and office notes, the Employee was seen at the request of his attorney by Dr. Douglas Rope who corroborated Dr. Horton's opinion and gave ratings of 35% to the right lower extremity at the 160 week level and 40% to the left lower extremity at the 160 week level which he attributed directly to the June, 2007 injury. *See*, Claimant's Exhibit C at 10.

Edward M. Prostic, MD evaluated the Employee on March 31, 2010 at the employer's request. Dr. Prostic opined that Mr. Bonar suffered twelve percent (12%) disability of the right lower extremity as a result of his June 30, 2007 injury. *See*, Employer's Exhibit 1 at 3. Dr. Prostic also noted the Employee would have to have a left arthrodesis in the future; however, he stated the prevailing factor of Mr. Bonar's left ankle condition was pre-existing disease and not the employee's June 30, 2007 accident.

At hearing, Mr. Bonar noted that his right ankle complaints included:

- Pain daily
- Weather changes cause pain
- Trouble sleeping due to pain
- Trouble standing and walking for long periods of time
- Trouble squatting, kneeling, bending, climbing and descending stairs
- Most of the time I use a cane

His left ankle complaints included:

- Pain daily
- Weather changes cause pain
- Trouble sleeping due to pain
- Trouble standing and walking for long periods of time
- Trouble squatting, kneeling, bending, climbing and descending stairs
- Trouble driving; pushing in the clutch causes pain
- Harder to shift a motorcycle
- Uneven ground causes more pain
- Most of the time I use a cane

Mr. Bonar was unable to continue work as the ankle brace he is required to wear contains a metal hinge; ATK has a strict safety rule that precludes employees from taking anything metal into its facility to preclude sparking that might ignite the explosives on site. Mr. Bonar last worked on July 7, 2009. Mr. Bonar applied both for unemployment benefits and Social Security Disability benefits; both applications were denied. At the time of his job loss Mr. Bonar applied for, and received, short term disability benefits because ATK denied whether his left ankle condition was related to his June 30, 2007 injury. The court was not presented with any further

information (no contract, benefits paid, etc.) about such benefits so no conclusions may be drawn about the impact of such benefits on this case. Due to his job loss, Mr. Bonar also lost his home and now lives with his brother. He performs various odd jobs such as occasionally mowing a lawn and helping his parents on their farm. Mr. Bonar can ride all terrain vehicles, play golf, and ride a motorcycle; however, he is unable to ride horses. I find Mr. Bonar to be a very credible witness. His testimony regarding his left ankle condition and treatment prior to his June 30, 2007 accident is consistent with the treatment records presented at hearing.

RULINGS OF LAW

The claimant in a workers' compensation proceeding has the burden of proving all elements of the claim to a reasonable probability. *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 912 (Mo.App. 2008); *Cooper v. Medical Center of Independence*, 955 S.W.2d 570, 575 (Mo.App. 1997). The quantum of proof is reasonable probability. *Thorsen v. Sachs Elect. Co.*, 52 S.W. 3d 611 at 620 (Mo.App. W.D. 2001); *Downing v. Willamette Industries, Inc.*, 895 S.W.2d 650, 655 (Mo.App. 1995); *Fischer v. Archdiocese of S. Louis*, 793 S.W.2d 195, 199 (Mo.App. 1990). "probable means founded on reason and experience which inclines the mind to believe but leaves room to doubt." *Thorsen*, 52 S.W.3d at 620; *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 329 (Mo.App. 1986); *Fischer*, 793 S.W.2d at 198.

Such proof is made only by competent and substantial evidence. It may not rest on speculation. *Griggs v. A.B. Chance Company*, 503 S.W.2d 697, 703 (Mo.App. 1974). Expert testimony may be required where there are complicated medical issues. *Goleman v. MCI Transporters*, 844 S.W.2d 463, 466 (Mo.App. 1992). "medical causation of injuries which are not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Thorsen*, 52 S.W.3d at 618; *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App. 1991). Compensation is appropriate as long as the performance of usual and customary duties led to a breakdown or a change in pathology. *Bennett v. Columbia Health Care*, 134 S.W.3d 84, 87 (Mo. App. 2004).

Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *Kelly v. Banta & Stude Constr. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. 1999); *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App. 1992); *Hutchinson v. Tri-State Motor Transit Co.*, 71 S.W.2d 158, 162 (Mo.App. 1986). The Commission's decision will generally be upheld if it is consistent with either of two conflicting medical opinions. *Smith v. Donco Const.*, 182 S.W.3d 693, 701 (Mo.App. 2006). The acceptance or rejection of medical evidence is for the Commission. *Smith v. Donco Const.*, 182 S.W. 3d 693, at 701 (Mo.App. 1986); *Bowers v. Hiland Dairy Co.*, 132 S.W. 3d 260, 263 (Mo.App. 2004). The testimony of Claimant or other lay witnesses as to facts within the realm of lay understanding can constitute substantial evidence of the nature, cause and extent of disability when taken in connection with or where supported by some medical evidence. *Pruteanu v. Electro Core, Inc.*, 847 SW.2d 203, 206 (Mo.App. 1993); *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 367 (Mo.App. 1992); *Fischer*, 793 S.W.2d at 199. The trier of fact may also disbelieve the testimony of a witness even if no contradictory or impeaching

testimony appears. *Hutchinson*, 721 S.W.2d at 161-2; *Barrett v. Bentzinger Brothers, Inc.*, 595 S.W.2d 441, 443 (Mo.App. 1980). The testimony of the employee may be believed or disbelieved even if uncontradicted. *Weeks v. Maple Lawn Nursing Home*, 848 S.W. 2d 515, 516 (Mo.App. 1993). “While the determination of a witness’s competency to testify is for the trial court, the credibility of a witness’s testimony is for the fact finder to determine. *Clark v. Reeves*, 854 S.W.2d 28, 30 (Mo.App. 1993). Credibility means the capacity for being believed or credited. *Marvin E. Nieberg Real Estate Co. v. Taylor-Morley-Simon, Inc.*, 867 S.W. 2d 618, 626 (Mo.App. 1993).” *Turnbo by Capra v. City of St. Charles*, 932 S.W.2d 851, 855 (Mo.App. 1996).

I find the Employee was injured in the course and scope of his employment on June 30, 2007. Dr. Sojka opined that Mr. Bonar’s disability was at the 150 week level (Exhibit D at 18), Dr. Rope opined it was at the 160 week level (Exhibit C at 10), and Dr. Prostic did not specify which level was appropriate (Exhibit 1 at 3). Exhibit D right lower extremity treatment records refer consistently to Mr. Bonar’s “ankle.” And, Exhibit E contains treatment records for Mr. Bonar’s left lower extremity (post June 30, 2007); entries at pages 3, 6, 8, 10, 15, 16, 19, 22, 26, 27, 29, 24, 38, 40, and 45 all refer to “ankle”. Missouri’s Workers’ Compensation Law defines the level of disability for the ankle to be the one hundred fifty five (155) week level. *See*, MO.REV.STAT. §287.190.1 (19) (2006). Thus, I find that Mr. Bonar’s right lower extremity injury was at the one hundred fifty five (155) week level. I further find that he sustained twenty three and one half percent (23½%) permanent partial disability. Thus, I award Mr. Bonar compensation totaling \$13,715.83 for his right ankle disability.³

I further find that the temporary total disability paid by ATK was reasonable and appropriate; however, I find an underpayment in the amount of \$2,653.80⁴ from July 1 through October 13, 2007 (15 weeks) to which the parties stipulated.

Additionally, I find that Mr. Bonar suffered compensable injury to his left lower extremity at the one hundred fifty five (155) week level, as the result of over compensating on it after he hurt his right ankle. I base this primarily on Dr. Sojka, the authorized treating physician on the right ankle, referring the Employee to Dr. Greg Horton by saying, “It would be my recommendation to have Dr. Horton address his post traumatic deformity as he is our foot and ankle specialist.” *See*, Claimant’s Exhibit D at 16. As noted above, and restated here for emphasis, Dr. Horton opined that, “Indeed, I do believe that the prevailing factor and his need for the treatment that he has received for his left leg was the occupational injury that was sustained in 6/07.” *See*, Claimant’s Exhibit Z at 1. Dr. Sojka, the physician authorized by ATK to treat Mr. Bonar, attested to the expertise of Dr. Horton and described him as a foot and ankle specialist. Both Dr. Sojka and Dr. Horton treated Mr. Bonar over the course of two years which included performing multiple surgeries. Absolutely no information regarding Dr. Prostic’s qualifications, training, certifications (if any), etc., were provided to the court. Thus, I am unable to ascertain whether he has any specialty in treating foot and ankle injuries; it is clear, though, that Dr. Horton does have such qualifications. Moreover, Dr. Prostic apparently saw Mr. Bonar only once. I find that Dr. Horton is far more qualified to render a persuasive opinion on the cause of Mr. Bonar’s left foot treatment needs and disability and I give his opinions great weight

³ (155 weeks x .235) x \$376.55/week

⁴ \$683.61 - \$506.69

and adopt them as fact. I completely reject Dr. Prostic's opinion – for which he gave absolutely no explanation – regarding the genesis of Mr. Bonar's left ankle condition following his June 30, 2007 injury.

I find the medical bills incurred as the result of Dr. Horton's treatment of the Employee to be fair and reasonable. I order the \$57,416.34 paid in the following way: \$49,473.59 for which the Employer will hold the Employee harmless and indemnify him should his group carrier seek reimbursement (as stipulated by the parties at hearing); \$448.06 to Employee for his out-of-pocket medical expense; and \$7,494.69 to Employee for medical bills still due and owing. I also find that Mr. Bonar was temporarily and totally disabled from August 4, 2008 to July 7, 2009. Thus, I award him \$32,910.35 in TTD benefits for this period.⁵

Regarding Mr. Bonar's left ankle, I find he sustained twenty percent (20%) disability to his left lower extremity at the 155 week level. Thus, I award Mr. Bonar compensation totaling \$11,673.05 for his left ankle disability.⁶

The Employee may need a fusion of the left ankle in the future. However such fusion would, in my opinion, be the result of both the surgery from the Employee's June 30, 2007 injury as well as his pre-existing left ankle condition. I will leave medical open as it relates to an AFO for the left ankle and for the treatment of any complications that may ensue from the implantation of any hardware such as screws and plates for the June 30, 2007 accident, pursuant to MO.REV.STAT. §287.140.8 (2006).

Claimant's counsel requested a fee equal to 25% of all amounts awarded. I find such request to be fair and reasonable and order a lien attached to this award in the amount of \$17,224.08 which is equal to 25% of the total of the TTD, PPD, and the unpaid expenses for Mr. Bonar's left ankle treatment.

As future medical is awarded to Mr. Bonar, the Division of Workers' Compensation retains jurisdiction on this claim.

Date: _____

Made by: _____

Carl Mueller
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

⁵ 48.142 weeks x \$683.61/week

⁶ (155 weeks x .20) x \$376.55/week