

**FINAL AWARD DENYING COMPENSATION**

Injury No.: 10-081006

Employee: Gregory Byrd  
Employer: Hussmann Refrigeration  
Insurer: Travelers Casualty & Surety Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo.<sup>1</sup> We have read the briefs, reviewed the evidence and considered the whole record. Pursuant to § 286.090 RSMo, we modify and supplement the administrative law judge's award and decision denying compensation as set forth below.

On page 4 of the administrative law judge's award, the administrative law judge recites that "Employer's first notification that a work accident occurred was when the claim was filed on October 8, 2010." To be clear, employer had actual knowledge that on February 2, 2010, an incident occurred that ended with employee supine on the floor of employer's premises, after which an ambulance transported employee to the hospital. Further, employer conducted an investigation, which included inspecting the equipment employee was operating just before the incident and contacting the hospital to inquire about employee's treatment. For these reasons, we clarify the administrative law judge's finding, thusly: Employer did not receive written notification that employee alleged he sustained a February 2010 injury by accident arising out of and in the course of employment until employee filed his claim for compensation on October 8, 2010.

Employee alleges that he fell from the Hyster he was driving when the Hyster battery died and the Hyster suddenly jerked to a stop. The administrative law judge was not convinced by employee's testimony in this regard. Neither are we. Our review of the evidence convinces us that it is at least equally likely that employee's fall from the Hyster was the result of an idiopathic syncopal event unrelated to his employment.

For the forgoing reasons, we affirm the administrative law judge's conclusion that employee did not carry his burden of proving he sustained an injury by accident arising out of and in the course of his employment.

Under these circumstances, it is not necessary for us to address employer's argument that employee's claim is barred by the statute of limitation found in § 287.430 RSMo. Accordingly, we do not adopt the administrative law judge's findings or conclusions regarding whether employee's claim was filed within the period set forth in § 287.430 RSMo.

We attach hereto and incorporate herein the October 1, 2013, award and decision of Administrative Law Judge Margaret D. Landolt. We affirm and adopt the administrative

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2009, unless otherwise indicated.

Employee: Gregory Byrd

- 2 -

law judge's findings, conclusions, award and decision to the extent they are not inconsistent with our findings, conclusions, award and decision set forth herein.

Given at Jefferson City, State of Missouri, this 17<sup>th</sup> day of June 2014.

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: Gregory Byrd

Injury No.: 10-081006

Dependents: N/A

Employer: Hussmann Refrigeration

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Travelers Casualty & Surety Co.

Hearing Date: July 3, 2013

Checked by: MDL

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: Alleged February 2, 2010
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within time required by Law? No
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant alleged he was operating a hyster when the battery ran out and stopped abruptly and caused him to fall to the ground.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: 0
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

Employee: Gregory Byrd

Injury No.: 10-081006

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: N/A
- 20. Method wages computation: N/A

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: 0
- 22. Second Injury Fund liability: No
- TOTAL: 0
- 23. Future requirements awarded: None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

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

Employee: Gregory Byrd

Injury No.: 10-081006

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Hussmann Refrigeration

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

Additional Party: Second Injury Fund

Insurer: Travelers Casualty & Surety Co.

Checked by: MDL

### **PRELIMINARIES**

A hearing was held on July 3, 2013 at the Division of Workers' Compensation in the City of St. Louis, Missouri. This case was tried concurrently with Injury No. 10-112426 which is the subject of a separate award. Gregory Byrd ("Claimant") was represented by Ms. Melissa Pantazi. Hussmann Refrigeration ("Employer") and its insurer Travelers Casualty & Surety Co. were represented by Mr. Hans Amann. Although the Second Injury Fund ("SIF") is a party to this case, pursuant to the agreement of the parties the claim against the SIF shall remain open, and the SIF did not participate in the hearing. Ms. Pantazi requested a fee of 25% of Claimant's award.

The parties stipulated that on or about February 2, 2010 Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Claimant's rate of compensation is \$422.97 for Permanent Partial Disability ("PPD") benefits; and Employer has paid no benefits.

The issues to be determined are whether Claimant sustained an accidental injury arising out of and in the course of employment on or about February 2, 2010; whether Employer received the requisite notice of the injury; medical causation; liability of Employer for past medical benefits in the amount of \$6,462; liability of Employer to provide future medical treatment; what is the nature and extent of PPD sustained by Claimant; whether the claim is barred by the statute of limitations; and what is the appropriate rate for Temporary Total Disability ("TTD") benefits.

### **SUMMARY OF EVIDENCE**

Claimant is a 52 year old man who has worked for Employer since 1995. Claimant drives a hyster, and worked 40 hours a week on the second shift. On February 2, 2010 he was paid \$19.85 per hour. A hyster is a machine which moves cases of goods around a warehouse. The base of the hyster is a platform upon which Claimant would stand to drive the hyster. The hyster is battery operated, and has a foot pedal. The foot pedal makes the hyster go, and if you take your foot off the pedal it stops.

Claimant testified on February 2, 2010 he was driving the hyster at work and was retrieving boxes when the indicator light began to blink indicating the battery was running low. Claimant testified the hyster abruptly ran out of power which caused it to stop suddenly, and he was thrown from the vehicle and knocked unconscious. Claimant testified he landed on the concrete floor and hit his left side. Some of his co-workers saw him fall. Claimant testified he was not dizzy before he fell, but was dizzy after he fell. He testified he did not lose consciousness until after he fell.

Claimant's co-worker Ray Moore testified on behalf of Claimant. Mr. Moore was working with Claimant at the time of the accident. Mr. Moore testified he was driving a car to the dock when he saw Claimant driving the hyster and the hyster locked and threw Claimant off. He saw Claimant was knocked unconscious. Just before the accident Claimant was fine and wasn't having any physical problems. Claimant did not complain to him about feeling faint or dizzy that day. Mr. Moore testified he saw the hyster jerk before it stopped, and if the battery on the hyster is low it will lock, jerk, and throw someone off. Because Mr. Moore and Claimant work the second shift, sometimes the workers who work the first shift fail to charge up the hysters before the second shift arrives.

Mr. Chris Orr testified on behalf of Employer. Mr. Orr is Employer's Environmental Health and Safety Manager. His job is to insure OSHA compliance, perform accident investigation, and injury prevention. Mr. Orr was not at Employer's premises when the February 2, 2010 accident occurred, and was not at the hospital after it happened. After the February 2, 2010 accident Claimant did not contact him to request follow up treatment. Employer's first notification that a work accident occurred was when the claim was filed on October 8, 2010. Mr. Orr testified the hyster was inspected immediately after the accident and was found to be free of damage or defects. Mr. Orr testified in order for the hyster to stop abruptly, you would have to remove your foot from the pedal. Mr. Orr does not know if the Hyster was fully charged or not at the time of the accident.

An incident report was completed by Employer. The incident report indicates Claimant had fallen off of a "stocker" and was lying in the last shipping aisle. Claimant was conscious and was conversing with others who were trying to assist him. Claimant was transported by ambulance to DePaul Hospital.

The Ambulance records indicate Claimant was lying supine on the floor alert and oriented with mild confusion. Claimant's co-workers reported they came around the corner and saw Claimant lying on the ground about one foot from his hydraulic lift. Claimant first reported he remembered falling, but later said he did not remember anything that happened. He reported pain in the back of his head. Claimant reported feeling dizzy when he reported to work.

The records of DePaul Hospital indicate Claimant was found lying on the floor at work, and Claimant had no memory of what happened. He reported feeling dizzy most of the day. He complained of pain in his neck and left flank. He denied recent illness or new medication. Claimant gave a history of feeling dizzy all day. He indicated he started to feel like he might pass out and he went to the bathroom to sit down, and the next thing he knew he was on the floor. He reported being put on a new blood pressure medication the week before. Claimant was diagnosed with syncope and collapse, and renal insufficiency. A CT scan of Claimant's head

showed volume loss and white matter changes worse than expected for age, and right maxillary sinusitis, but no acute intracranial abnormality. A CT of his cervical spine showed no fractures, but mild disc space narrowing at C2-3, and moderate disc space narrowing at C3-4, C4-5 and C5-6. On October 4, 2010, an x-ray of Claimant's left hip was performed that revealed lucency at the left femoral head. The report asked to correlate if there was the possibility of avascular necrosis or direct traumatic injury.

Claimant testified after he got out of the hospital he went to work the next day. He testified he was still having pain from the fall. Employer did not offer him any medical treatment after his fall, and he did not request medical treatment from Employer as he didn't know they could send him for treatment. Claimant testified his left side was sore including his neck, hip, head, and he had headaches behind his ear. He has soreness in his left hip which was not present before his accident.

After his fall Claimant testified his left hip pain got worse, and he saw his Doctor in the summer of 2010, and was referred to Dr. Tull.

On October 4, 2010 Claimant was putting his lunch in the refrigerator at work when he slipped on some water on the floor, and fell hitting the left side of his head on the bottom of the refrigerator door. After he fell Claimant testified he had pain in his head and left knee. He reported the injury to a security officer who did not offer him treatment, and he did not ask Employer for medical treatment.

On October 18, 2010 Claimant reported to Dr. Tull, an orthopedist, and reported five months of worsening left hip pain. He indicated he had reached the point of having difficulty walking. He reported the pain was in his groin and anterolateral hip and was spontaneous in onset. He reported taking Prednisone in the past and had episodes of binge drinking in the past. Dr. Tull recommended an MRI to confirm the diagnosis of left hip osteonecrosis, and a CT to evaluate the possible collapse of the head. Dr. Tull took Claimant off work until November 1, 2010 pending MRI and CT hip results.

On October 22, 2010 an MRI of Claimant's hips was performed and the impression was bilateral avascular necrosis of the femoral heads, left greater than right. The presence of marrow edema within the left femoral head and neck was compatible with acute on chronic pathology.

Claimant followed up with Dr. Tull on October 25, 2010, and Dr. Tull reported the MRI confirmed a large area of osteonecrosis of Claimant's left hip and a somewhat small area of osteonecrosis in Claimant's asymptomatic right hip.

On October 27, 2010 a CT of the left hip was performed which revealed avascular necrosis with superolateral subchondral bony collapse. Claimant followed up with Dr. Tull on November 1, 2010, and he explained to Claimant that he would need hip replacement surgery. At that time Claimant was having significant dental problems which needed to be resolved before surgery could be performed. Claimant admitted to being an alcoholic, which puts him at greater risk for complications from surgery including hip dislocation. Dr. Tull kept Claimant off work until further notice.

On December 15, 2010 Claimant returned to Dr. Tull for a follow up visit. He had his dental work done and his left hip pain was minimal. He walked without a limp and had painless range of motion in his left hip. Dr. Tull diagnosed asymptomatic left hip osteonecrosis. Since Claimant's pain was controlled at that time Dr. Tull recommended against surgery. He advised Claimant he would need hip replacement surgery when the pain returned. He released Claimant to return to work on January 10, 2011 with restrictions of no stooping, bending, squatting, or climbing.

Claimant returned to Dr. Tull on February 10, 2011 and reported significant left hip pain. He was unwilling to undergo surgery at that time despite significant pain, and he was concerned about not being able to get back to work. Dr. Tull kept Claimant off work until March, and indicated he would release him then if he was feeling better.

Claimant returned to Dr. Tull in April 2011. He was still having significant pain and was unable to work. Claimant was suffering from significant ulcerations in his mouth. Dr. Tull did not think surgery was suitable given Claimant's mouth ulcerations due to the risk of infection. In May 2011 Claimant saw Dr. Tull again, and reported a recent episode of severe hip pain. Dr. Tull noted Claimant had abstained from drinking for two months. Dr. Tull counseled Claimant about the risk of dislocation if he were to have hip replacement surgery, and had a recurrence of his drinking.

On July 25, 2011 Claimant returned to Dr. Tull. He reported pain and intermittent problems with alcohol abuse. He reported drinking a fifth of alcohol a day, and then being sober for as long as a month. He was attending AA meetings but was having difficulty quitting drinking. Dr. Tull again advised Claimant of the risks of hip dislocation in the setting of excessive alcohol abuse, and advised Claimant it would be best to be sober on a long term basis before considering having a hip replacement. He advised him to postpone surgery.

Claimant was laid off in September 2011, and has not worked since. Currently Claimant has migraines two to three times a week and has problems sleeping because of his neck. He takes Oxycodone for hip pain. He has difficulty walking. He walks slowly and rests throughout the day. He has difficulty getting in and out of a car, and with steps. He is unable to sleep on his left side, and his hip wakes him at night. Cold weather causes him problems.

Claimant filed a claim for compensation on October 8, 2010. On page one of his claim Claimant lists a date of accident of February 10, 2010. In his claim, Claimant alleges he was driving a hyster when it stopped and threw him off. Claimant also filed a claim against the Second Injury Fund alleging a previous injury of September 28, 2010. In his Second Injury Fund claim he alleges he was already hurting from his previous work injury of February 2, 2010. Claimant signed the claim, and dated it February 2, 2010.

Claimant saw Dr. David Volarich on December 8, 2011. Dr. Volarich took a history, examined Claimant, issued a report, and testified on behalf of Claimant. Claimant told Dr. Volarich as a result of his February 2, 2010 and October 4, 2010 injuries he has headaches that start in his left temple. He has a headache once a week that last for about 30 minutes. He cannot hold his head upright when he has a headache. He also complains of hearing loss in his left ear, and ongoing tenderness in his neck with limited motion due to pain. Claimant told Dr. Volarich

that after his work injury of October 4, 2010 he complained of a bruise to his knee which has resolved, however, he has occasional soreness in his left knee which was probably due to the altered gait because of his hip. He is able to accomplish his activities of daily living, but requires medications to help him sleep at night. Claimant indicated his left hip seems to be aggravating his left knee more than the bruise he had from the October 4, 2010 injury, and he had a minor increase in headaches after the October 4, 2010 injury.

Dr. Volarich stated x-rays of Claimant's left hip taken on February 10, 2010 showed he had avascular necrosis, which is a condition that takes months to years to develop. Risk factors include use of steroids and heavy alcohol use. Upon examination of Claimant's cervical spine, Dr. Volarich found the worst pain occurred with left rotation. Palpation elicited pain in the left paraspinal muscles from C4-C7 as well as in the left trapezius muscle.

As a result of the February 2, 2010 injury, Dr. Volarich diagnosed closed head trauma with mild post traumatic headaches, cervical strain sprain, and left hip contusion. With regard to the accident of October 4, 2010, he diagnosed mild left knee strain – resolved and left temporal contusion causing mild increase in headaches. Dr. Volarich opined the work accident that occurred on February 2, 2010 when Claimant was driving the hyster and the battery stopped and caused Claimant to fall to the ground, was the substantial contributing factor as well as the prevailing or primary factor causing the scalp contusion, the cervical strain injury, and the contusion to the left hip for which he received conservative care. Dr. Volarich's opinion was based upon the history conveyed to him by Claimant. Dr. Volarich testified Claimant's lab values at the Emergency Room immediately following the accident showed that he did not have as much function as he should have as far as clearing waste from his body, which is a function of his hypertension. Dr. Volarich testified that the change in Claimant's blood pressure medication is probably the reason for the syncopal episode when he passed out.

Dr. Volarich opined the significant pathology in his left hip (advanced avascular necrosis with femoral head collapse) is due to steroid use for mouth ulcers, and alcohol use from the past. The contusion to the left hip from the February 2, 2010 accident was in his opinion a triggering event causing his left hip to be symptomatic. He noted that the MRI scan showed right femoral head avascular necrosis as well that was asymptomatic. Dr. Volarich opined Claimant was at MMI with reference to his work injuries but he needs a total hip joint replacement because of his avascular necrosis.

Dr. Volarich also opined the accident when Claimant slipped on water on October 4, 2010, was the substantial contributing factor as well as prevailing or primary factor causing the left temporal scalp contusion that in turn caused a mild increase in headaches as well as causing a left knee strain from which symptoms resolved.

Dr. Volarich rated Claimant's disabilities as a result of the February 2, 2010 injury at 5% PPD of the body as a whole rated at the head due to the closed head trauma, scalp contusion, and post traumatic headaches that occur a couple of times a month. He rated 15% PPD of the body as a whole rated at the cervical spine due to the strain/sprain injury causing neck pain and lost motion. He also rated 10% PPD of the hip due to the contusion that caused hip pain. As a result of the October 4, 2010 accident, Dr. Volarich rated 5% PPD of the body as a whole rated at the

head due to the temporary scalp contusion causing a mild increase in headaches, and no PPD in the left knee since the strain injury resolved.

Dr. Volarich opined Claimant will need ongoing care for his pain syndrome including pain medications, muscle relaxants, and physical therapy among other things, and additional care for his left hip.

Claimant was evaluated by Dr. Russell Cantrell on November 19, 2012 at the request of Employer. Dr. Cantrell reviewed the medical records, took a history, examined Claimant, prepared a report, and testified on behalf of Employer. Claimant gave Dr. Cantrell a history of injury that was consistent with his trial testimony. Dr. Cantrell testified Claimant sustained a cervical strain as a result of the February 2, 2010 injury that was superimposed on multi-level degenerative disc disease, and he did not attribute any disability to the cervical strain. He did not assign any disability to the cervical strain because he was able to resume all of his regular work activities without restrictions, and he did not seek any additional treatment for persisting neck pain complaints following his February 2010 injury, and due to the fact that the residual findings he saw on his examination were more likely attributable to underlying moderate degenerative disc disease rather than to a muscular strain that occurred in February 2010. He testified Claimant also sustained a left hip contusion, but the February 2010 injury did not cause his avascular necrosis and did not cause any aggravation of his avascular necrosis, which are the causes of his current and ongoing symptoms in his left hip.

Dr. Cantrell also testified the October 4, 2010 accident did not result in any PPD. He testified Claimant was not in need of any additional treatment as a result of his work injuries.

### **FINDINGS OF FACT AND RULINGS OF LAW**

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Claimant failed to meet his burden of proving he sustained a work accident on February 2, 2010 that arose out of and in the course of his employment. Although Claimant alleges the battery on the hyster died, and he was abruptly thrown from the vehicle, I do not find his testimony to be consistent with the evidence in this case. Although his co-worker testified he saw the hyster jerk and throw Claimant off, I do not believe he was in a position to determine if the battery died.

The Emergency Room records do not mention anything about a battery being depleted and causing the hyster to stop abruptly. It is clear Claimant could not remember what had happened immediately before the injury. He told the ambulance attendants immediately after the injury he could not remember what happened and also told them he was feeling dizzy. He told the doctors in the Emergency Room immediately after the injury he was feeling dizzy all day and told them he was taking a new blood pressure medicine. It is not reasonable to believe Claimant was in a better position to remember the events of the accident more clearly months after it occurred, than he did just hours after the accident. The Emergency Department diagnosed syncope and collapse and renal insufficiency. Dr. Volarich, Claimant's own expert testified that his renal insufficiency was probably the reason for the syncopal episode. I find Claimant fainted

on February 2, 2010, which caused him to fall off the hyster. Claimant has failed to meet his burden of proof.

Even if it is assumed Claimant proved an accident occurred, the claim is barred by the statute of limitations. The claim for compensation alleges an injury date of February 10, 2010. At no time did Claimant amend his claim to allege a date of injury of February 2, 2010, or file a new claim alleging a date of injury of February 2, 2010. Although the date of February 2, 2010 appears twice on the second page of the claim form, it is not stated as the date of injury. The mere fact that Employer had notice that an incident occurred on its premises on February 2, 2010 does not relieve Claimant from his legal obligation to file a timely claim for compensation. Under the strict construction provisions of Section 287.430 RSMO (2005) a claim against Employer for the February 2, 2010 accident is barred by the statute of limitations.

The remaining issues are moot. The claim for compensation against the Employer and Second Injury Fund is denied.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

MARGARET D. LANDOLT  
*Administrative Law Judge*  
*Division of Workers' Compensation*

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

Injury No.: 10-112426

Employee: Gregory Byrd  
Employer: Hussmann Corporation  
Insurer: Travelers Indemnity Company of America  
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 § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 1, 2013, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 1, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 17<sup>th</sup> day of June 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Gregory Byrd

Injury No.: 10-112426

Dependents: N/A

Employer: Hussmann Corporation

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Travelers Indemnity Company of America

Hearing Date: July 3, 2013

Checked by: MDL

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: October 4, 2010
5. State location where accident occurred or occupational disease was contracted: St. Louis, 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 slipped on some water on the floor and fell.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Head and left knee.
14. Nature and extent of any permanent disability: 0
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? 0

Employee: Gregory Byrd

Injury No.: 10-112426

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: \$422.97 for PPD
- 20. Method wages computation: By stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: 0
- 22. Second Injury Fund liability: No
- TOTAL: 0
- 23. Future requirements awarded: None

Said payments to begin 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Ms. Melissa Pantazi

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

Employee: Gregory Byrd

Injury No.: 10-112426

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Hussman Corporation

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

Additional Party: Second Injury Fund

Insurer: Travelers Indemnity Co of America

Checked by: MDL

### **PRELIMINARIES**

A hearing was held on July 3, 2013 at the Division of Workers' Compensation in the City of St. Louis. This injury was tried concurrently with Injury No. 10-081006 which is the subject of a separate award. Gregory L. Byrd ("Claimant") was represented by Ms. Melissa Pantazi. Hussmann Corporation ("Employer") and its insurer, Travelers Indemnity Insurance Company of North America, were represented by Mr. Hans Amann. Ms. Pantazi requested a fee of 25% of claimant's award.

The parties stipulated that on or about October 4, 2010, Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of employer; venue is proper in the City of St. Louis, Missouri; the claim was timely filed; Claimant provided proper notice of the injury; and the Permanent Partial Disability ("PPD") rate is \$422.97. Employer has paid no benefits.

The issues for determination are medical causation; liability of Employer for past medical benefits of \$8,526.62; liability of Employer for future medical care; nature and extent of PPD; what is the Temporary Total Disability ("TTD") rate; and whether Employer is liable for TTD benefits from October 18, 2010 until July 5, 2011.

### **SUMMARY OF EVIDENCE**

On October 4, 2010, Claimant was putting his lunch in the refrigerator at work when he slipped on some water on the floor, and fell hitting the left side of his head on the bottom of the refrigerator door. Claimant testified after he fell he had pain in his head and left knee. He reported the injury to a security officer who did not offer him treatment, and he did not ask Employer for medical treatment. Claimant testified he was kept off work by Dr. Tull from October 18, 2010 through July 5, 2011. He testified he returned to work on July 5, 2011. He received no TTD benefits, and he testified he would have worked 40 hours a week for \$19.85 per hour.

Off work slips included in Claimant's medical records reveal Dr. Tull took Claimant off work from October 10, 2010 until January 10, 2011 for evaluation and treatment in connection with Claimant's pre-existing left hip condition of avascular necrosis and fracture of the femoral head. Claimant was released to light duty on January 20, 2011 and full duty on July 5, 2011.

Claimant testified he incurred medical bills of \$8,526.62 as a result of his accident of October 4, 2010.

Claimant testified he had an increase in headaches after the October 4, 2010 incident. Claimant testified his left knee problems eventually resolved.

Claimant saw Dr. David Volarich on December 8, 2011. Dr. Volarich took a history, examined Claimant, issued a report, and testified on behalf of Claimant. Dr. Volarich testified the October 4, 2010 incident was the prevailing or primary factor causing a left temporal scalp contusion that in turn caused a mild increase in headaches and a left knee strain from which symptoms resolved. The doctor stated, within a reasonable degree of medical certainty, that Claimant sustained 5% PPD of the body as a whole rated at the head due to the left temporal scalp contusion causing a mild increase in headaches. He did not find any disability from the left knee strain, since Claimant's symptoms had resolved.

Dr. Volarich did not testify as to the reasonableness or necessity of medical bills totaling \$8,526.62.

Claimant testified that his deposition was taken by Hussmann Corporation on August 5, 2011. He agreed that he had testified on August 5, 2011, that he was no longer having problems with his left knee and he was no longer having problems with headaches as a result of the October 4, 2010 incident.

On November 19, 2012, Claimant was examined and evaluated by Dr. Russell Cantrell. Claimant told Dr. Cantrell he did not receive any specific medical treatment for his October 2010 injury. He told Dr. Cantrell he had a temporary increase in headaches after his October 10, 2010 fall but his headaches returned to the baseline level of symptoms he was experiencing following a previous incident that occurred in February 2010. In his report Dr. Cantrell stated that the employee had sustained no permanent disability to the head, or left knee, as a result of the October 4, 2010 incident.

### **FINDINGS OF FACT AND RULINGS OF LAW**

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Claimant's accident of October 4, 2010, arose out of and in the course and scope of his employment. However, Claimant has not shown that the accident resulted in any permanent disability to the left knee. Both Drs. Volarich and Cantrell agree there is no permanent disability to his left knee.

Dr. Volarich assigned 5% PPD to the head/body as a whole due to Claimant's October 4, 2010, incident and found it was the prevailing or primary factor causing a left temporal scalp contusion that in turn caused a mild increase in headaches. There is no evidence in the treatment records to support his conclusion. In arriving at his disability rating he relies solely on Claimant's history. Dr. Tull's records do not reflect any treatment after October 4, 2010 directed at treating the head/headaches, a left scalp contusion, or his left knee. Furthermore, the history Claimant gave Dr. Volarich is inconsistent with his deposition in which he testified he was no longer having headaches.

Claimant's deposition testimony, in conjunction with the fact that no treatment was provided from the date of the October 4, 2010 date of injury to the present to cure and relieve claimant from ongoing headaches, persuades the Court that no permanent disability resulted from Claimant's October 4, 2010 scalp contusion.

Claimant offered Exhibit "F", medical bills totaling \$8,526.62, and is asking for an award of medical bills. There was no evidence, other than Claimant's own testimony, linking those medical bills to the work accident of October 4, 2010. A large portion of the bills are for dates of services prior to the October 4, 2010 accident. Some of the bills are for treatment to the hip, and for laboratory services which do not appear to be related to the work accident. There was no evidence presented by Claimant's attorney that the medical care and resulting expenses for services provided were directed to cure and relieve the affects of a workplace injury. (See Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo. 1989). Claimant received no medical treatment specifically directed at his head or left knee. Claimant has not satisfied his burden of proof in showing that he incurred medical expenses totaling \$8,526.62 as a result of the October 4, 2010 accident.

Claimant also failed to prove he is entitled to past TTD benefits. Although Claimant testified he was taken off work by Dr. Tull, Dr. Tull's records reveal Claimant was taken off work for his pre-existing left hip condition which is not related to his accident of October 4, 2010. Because no TTD is awarded the issue of TTD rate is moot.

There is no evidence Claimant needs additional medical treatment as a result of his accident of October 4, 2010.

No benefits are awarded, and in light of the findings and rulings in this case, the Claim against the Second Injury Fund is denied.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

MARGARET D. LANDOLT  
*Administrative Law Judge*  
*Division of Workers' Compensation*