

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

Injury No.: 09-086240

Employee: Betty L. Craig
Employer: Christopher and Banks Corporation
Insurer: Wausau Business Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

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 4, 2011. The award and decision of Administrative Law Judge David L. Zerrer, issued October 4, 2011, 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 16th day of April 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Betty L. Craig

Injury No. 09-086240

Dependents:

Employer: Christopher and Banks Corporation

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Passed for further proceedings

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

Insurer: Wausau Business Insurance Company

Hearing Date: June 21, 2011

Checked by: DLZ

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: October 28, 2009
5. State location where accident occurred or occupational disease was contracted: Columbia, Boone 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: Claimant fell from ladder
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: Knee; lower extremity
14. Nature and extent of any permanent disability: 15% of the left knee at the 160-week level
15. Compensation paid to-date for temporary disability: \$11,123.82
16. Value necessary medical aid paid to date by employer/insurer? \$4,602.50

Employee: Betty L. Craig

Injury No. 09-086240

- 17. Value necessary medical aid not furnished by employer/insurer? \$57,386.24
- 18. Employee's average weekly wages: \$758.45
- 19. Weekly compensation rate: \$505.63/\$422.97
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

Unpaid medical expenses: \$57,386.24

-0- weeks of temporary total disability (or temporary partial disability)

24 weeks of permanent partial disability from Employer \$10,151.28

-0- weeks of disfigurement from Employer

- 22. Second Injury Fund liability: Yes No Open X

Passed for further proceedings

TOTAL: \$67,537.52

- 23. Future requirements awarded: Open

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: Thad Mulholland

Employee: Betty L. Craig

Injury No. 09-086240

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Betty L. Craig

Injury No: 09-086240

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Christopher and Banks Corporation

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

Additional Party: Passed for further proceedings

Insurer: Wausau Business Insurance Company

Checked by: DLZ

On the 21st day of June, 2011, the parties appeared before the undersigned Administrative Law Judge for final hearing. The Claimant appeared in person and by her attorney, Thad Mulholland. The Employer appeared by its attorney, Brad McChesney. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, is a party to this claim; however, the parties have agreed that the Second Injury Fund is excused from participating in this hearing. The record was ordered to be left open until 5:00 p.m., July 15, 2011.

The parties have entered into a stipulation as to certain facts which are not at issue in this claim as follows, to wit: On or about the 28th day of October, 2009, Christopher and Banks Corporation was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully insured by Wausau Business Insurance Company; on the alleged injury date of October 28, 2009, Betty L. Craig was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the parties agree that on or about October 28, 2009, Claimant sustained an accident which arose out of the course of and scope of employment; the employment occurred in Boone County, Missouri, and the parties agree that Boone County, Missouri, is the proper venue for this hearing; the Claimant notified the Employer of the injury as required by Section 287.420; the Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident

Employee: Betty L. Craig

Injury No. 09-086240

Claimant's average weekly wage was \$758.45, sufficient to allow the following compensation rates: \$505.63 for temporary total disability and permanent total disability, and \$422.97 for permanent partial disability; temporary disability benefits have been paid in the amount of \$11,123.82, prior to the date of this hearing; the Employer has paid medical benefits in the amount of \$4,602.50, prior to the date of this hearing; Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award.

ISSUES

Whether the accident caused the injuries and disabilities for which benefits are now being claimed?

Whether the Employer is obligated to pay for past medical expenses?

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

The nature and extent of any permanent disabilities?

DISCUSSION

A legal file was established for this hearing which consisted of the following documents, to wit: Report of Injury; Claim for Compensation, filed with the Division November 5, 2009; Answer of the Employer to the Claim for Compensation, filed with the Division December 7, 2009; Request for Hearing, filed with the Division March 15, 2011.

Claimant offered, and there was admitted without objection, (except for objections made on a timely basis at the time of the deposition) Exhibits A through G.

Employee: Betty L. Craig

Injury No. 09-086240

Betty L. Craig, claimant herein, testified in her own behalf. Claimant is 63 years of age at the date of hearing, born June 10, 1948. She has been married 24 years and lives with her husband. Claimant testified that she is currently employed by Helzberg Diamonds as a sales associate. Claimant started working with the current employer March 14, 2011. She works on the sales floor showing merchandise and spending most of the day on her feet. Claimant testified that she is allowed to sit on a tall stool from time to time as an accommodation from the employer.

Claimant testified that when she stands for a long time her left knee has pain and becomes stiff. Claimant stated that sitting on the stool relieves the pain and stiffness in her knee. Claimant testified that she feels a dull continuous pain in her knee if she stands too long. She also indicated that her knee swells up and retains fluid when she stands for a long period of time.

Claimant testified that prior to her current position, she worked for J.C. Penney Stores from August 2010 until March 2011, when she went to work for the current employer. At J.C. Penney, Claimant worked first in the custom decorating department where she spent most of her time sitting at a desk or table. Claimant worked about 20 hours per week, but the department where Claimant was working closed, and she was transferred to fine jewelry where she worked for about one month working eight to twelve hours per week. Claimant testified that she has worked in retail sales since about 2000 and from about 2000 until the date of her accident.

Claimant testified that on October 28, 2009, she was a store manager for the Employer and that part of her duties as store manager was to be responsible for sales, staffing, merchandizing, and customer service. Claimant testified that on October 28, 2009, she was standing on a ladder changing the positioning of some clothing on display. Claimant was working alone in the store changing displays which were as high as 15 feet above the floor.

Employee: Betty L. Craig

Injury No. 09-086240

Claimant testified that she was attempting to come down from the ladder when she missed a step and fell to the floor. Claimant does not know exactly what step she missed, but she thought about the third step. Claimant stated that she fell against a window hitting her back and head. Claimant remained on the floor until the ambulance and paramedics arrived. Claimant got up from the floor with the assistance of the paramedics, and she walked to the back storeroom.

Claimant then proceeded to her own vehicle. While walking on the parking lot to her car, Claimant reported that her left knee started swelling. Claimant drove herself to her private physician's office and was referred on to the emergency room. Claimant presented to the University of Missouri Medical Center emergency room where x-rays were taken and no fractures found. Claimant was placed in a temporary splint and referred on to Dr. Aggarwal for additional treatment. Claimant testified that she first saw Dr. Aggarwal on October 30, 2009, at which time an MRI was ordered. Dr. Aggarwal diagnosed three fractures in Claimant's knee.

Claimant testified that she received no treatment between November 2009 and January 2010. Claimant stated that she was scheduled once for knee surgery on November 24, 2009; however, that surgery was cancelled because Employer wanted to get another opinion on the need for knee replacement. Thereafter, Employer denied authorization for the recommended knee replacement surgery, and Claimant proceeded on her own to have the knee replacement surgery.

Claimant testified that she ultimately received knee replacement surgery in January 2010. In March 2010 Claimant received a surgical manipulation of the left knee to free up scar tissue. Claimant further testified that after surgery she received physical therapy from January 2010 until March 2010. Dr. Aggarwal released Claimant to return to work on April 14, 2010.

Employee: Betty L. Craig

Injury No. 09-086240

Claimant testified that she continues to have reduced range of motion in her left knee and that it gets stiff and sore from time to time. Claimant rates her pain in the knee at 5 out of 10 at the highest and 1 out of 10 at the lowest. Claimant does not run anymore, but she does bicycle on a regular basis. Claimant testified that she recently rode a bicycle for 20 miles on the Katy Trail in Boone County, Missouri. Claimant also does weight training.

Claimant testified that she had an accident on December 26, 2002, when she fell and hurt her left knee. Claimant had surgery on her left knee in February 2002. Claimant had physical therapy for three months after the surgery after which she was released from treatment with full range of motion and no pain in her left knee.

Claimant further testified that prior to the December 2002 accident, she had led a healthy lifestyle doing exercising, running and bicycling. Claimant indicated that she had no problem with either knee prior to December 2002, but that her physician told her in 2003 that she was beginning arthritis in both of her knees. Claimant testified that after her 2002 injury, she began running again and worked out as well. Claimant stated that she ran 3-5 miles at a time, she biked 4-6 miles at a time, and that she continued this exercise regimen until her accident in October 2009.

Claimant testified that in 2008 she sought medical advice from Dr. Ball because Claimant was 60 years old and she wanted to run a marathon race or mini-triathlon. Claimant testified that she was not having any particular problem with her left knee at that time except for some stiffness from time to time.

Dr. Ball took x-rays for Claimant's left knee and diagnosed Claimant with arthritis. Dr. Ball administered injections into Claimant's left knee, and Claimant reported no pain after the

Employee: Betty L. Craig

Injury No. 09-086240

injections and that the stiffness improved. Claimant testified that after the injections in 2008, she received no further treatment on her left knee until the fall of October 28, 2009.

On cross-examination, Claimant admitted that she does no heavy lifting at her current job, nor does she use ladders, and she does not have to crawl. Claimant admitted that prior to October 2009 her left knee would get stiff and sore, but that her right knee does not bother her. Claimant also admitted that Dr. Ball recommended a bilateral knee replacement before the 2009 injury. She further admitted that she bicycles for as much as an hour and fifteen minutes three or four days per week. Claimant admitted that she does not have pain in her left knee when she rides a bicycle because there is no weight bearing while peddling.

Claimant admitted that she wore a brace from time to time when working for Employer, but that she does not wear a brace anymore.

Claimant admitted that she settled her 2002 injury for 17% disability to the left knee.

Claimant admitted certain exhibits containing medical records of Claimant's treatment for the October 28, 2009, injury as well as for Claimant's pre-existing injuries and conditions. The medical records generally support the testimony of the Claimant with regard to her treatment.

Claimant offered, and there was admitted without objection, Exhibit I, which sets out certain medical records, medical billings, and the curriculum vitae of a physician. Although there are billing records which duplicate certain charges, there are billings for medical services rendered to the Claimant which support a total billing, according to the exhibit, of \$57,386.24.

Dr. Ajay Aggarwal testified on behalf of Claimant by deposition. Dr. Aggarwal testified that he saw Claimant for the first time on October 30, 2009, with a history of falling from a ladder and injuring her knee. Dr. Aggarwal reviewed x-rays and ordered an MRI. He stated that

Employee: Betty L. Craig

Injury No. 09-086240

the MRI showed a fracture of the medial tibial plateau, a significant bone bruise over the medial patellar facet, and two patellar fractures. Dr. Aggarwal testified that he reviewed records of treatment to Claimant's left knee which showed that she had Synvisc injections in her knee in April 2008 with good results.

Dr. Aggarwal testified that based on the Claimant's age and the condition of her knee, that the treatment recommended for a tibial plateau fracture is knee replacement. Dr. Aggarwal testified that Claimant's fractures showed some displacement on the MRI. He further testified that he made the decision that the best course of treatment for Claimant's knee fracture was knee replacement. Dr. Aggarwal further stated that based on Claimant's functioning of the knee prior to the injury, the injury was the contributing factor in the change of Claimant's function of the knee and the fact that there were fractures in multiple places in the knee, led him to decide that knee replacement was the single best option.

Dr. Aggarwal testified that after a six week follow-up, he noted that Claimant was still having problem with range of motion of her knee. Dr. Aggarwal testified that he performed a second surgery to relieve the stiffness in Claimant's knee by manipulation.

Dr. Aggarwal identified exhibits which set out charges for services rendered to the Claimant in connection with her treatment and knee replacement. He also testified that Claimant should have been in off-work status for 10-12 weeks after her surgery. In addition, he testified that Claimant should have been off work from the date of the injury until the date of surgery in January 2010. Dr. Aggarwal testified that Claimant would have been off work for an additional 8-10 weeks after the manipulation surgery.

Employee: Betty L. Craig

Injury No. 09-086240

Dr. Aggarwal testified that he last saw Claimant April 14, 2010, and that at that time Claimant had completed physical therapy and that she was able to return to biking, swimming, and golfing, without restrictions.

On cross-examination, Dr. Aggarwal admitted that Claimant had Synvisc injections as early as 2003 through treatment with Dr. Hoeft and that Dr. Hoeft had diagnosed her with grade 4 chondromalacia. He further admitted that in Claimant's case, her radiologic findings showed severe arthritis, but her clinical records showed only some symptoms of arthritis.

Dr. Aggarwal admitted that, in his opinion, given the age of Claimant, replacement of the knee is the best treatment option when there is a fracture, even a minimally displaced fracture.

Dr. Garth Russell testified on behalf of the Claimant by deposition. Dr. Russell testified that he performed an independent medical evaluation on the Claimant and issued a written report of his evaluation dated March 10, 2011. Dr. Russell testified that he took a history from Claimant, reviewed certain medical records identified in the report, and conducted a physical examination of the Claimant as part of his evaluation.

Dr. Russell testified that the medical records showed that Claimant suffered a fracture of the medial tibial plateau and the knee cap as a result of her fall of October 28, 2009. Dr. Russell further testified that Claimant gave a history of prior treatment to her left knee in 2003 and 2008. He also stated that the fact that Claimant was diagnosed with grade 4 chondromalacia did not mean that a knee replacement was inevitable for her.

Dr. Russell opined that based on the multiple fractures in the knee as a result of the accident of October 28, 2009, and the fact that Claimant's knee was essentially asymptomatic prior to the injury, Claimant's accident caused the need for the knee replacement surgery which occurred in January 2010.

Employee: Betty L. Craig

Injury No. 09-086240

Dr. Russell testified that, in his opinion, Claimant has suffered a 30% permanent partial disability to the left knee at the 160-week level. He further opined that 15% of the disability is related to the pre-existing condition of the left knee and 15% of the disability is attributable to the accident which occurred October 28, 2009. Dr. Russell opined that he did not believe that Claimant would need future medical treatment for her knee for 12 to 15 years from the date of replacement, when the hardware in Claimant's knee would have to be replaced.

The Employer did not conduct any cross-examination of Dr. Russell.

Dr. Richard C. Lehman testified on behalf of Employer by deposition. Dr. Lehman testified that he performed an independent medical evaluation on the Claimant and issued a written report dated March 16, 2010, with regard to his evaluation. Dr. Lehman testified that he took a history from the Claimant, reviewed certain medical records identified in his report, and performed a physical exam of the Claimant. Dr. Lehman testified that he found that Claimant's left knee stability was good, without a large amount of popping, catching, and no mechanical symptoms in the left knee. Dr. Lehman found that Claimant's range of motion in flexion was poor and that Claimant's quadriceps muscle strength was less than normal. Claimant had no patellar clunk or valgus clicking.

Dr. Lehman testified that he diagnosed Claimant with a nondisplaced fracture of the posterior medial tibial plateau with fracture of the medial patella with two fragments. He also diagnosed Claimant with severe degenerative arthritis. Dr. Lehman testified that a nondisplaced tibial plateau fracture can be treated with nonweight bearing for four to six weeks and physical therapy. Dr. Lehman stated that age is not a factor in treating a nondisplaced tibial plateau fracture.

Employee: Betty L. Craig

Injury No. 09-086240

Dr. Lehman testified that end stage arthritis treatment is a total knee replacement. It was his opinion that it depends on which component of the condition is being examined to determine if a total knee replacement is necessary. Dr. Lehman testified that, in his opinion, the prevailing factor in the need for total knee replacement was Claimant's pre-existing arthritis.

Dr. Lehman testified that Claimant could work without restrictions if considering only the work injury of October 28, 2009, without the total knee replacement.

On cross-examination, Dr. Lehman admitted that if Claimant were his patient he would refer her for the same surgery as she received from Dr. Aggarwal. Dr. Lehman admitted that Claimant may need medical treatment in the future to revise the total knee replacement; however he also admitted that if the Claimant kept her activity level up into her eighties, she may never need a revision.

Dr. Lehman admitted that the fracture that he saw on the x-rays was not displaced to the extent that it would not heal, absent the arthritis condition which Claimant suffered. He further admitted that, in his opinion, the fracture played no part in exacerbating or changing Claimant's arthritis.

FINDINGS OF FACT AND RULINGS OF LAW

Whether the accident caused the injuries and disabilities for which benefits are now being claimed?

The parties stipulated that Claimant suffered an accident within the course and scope of her employment on October 28, 2009. The authorized treating physician treated Claimant's injury by obtaining an MRI which disclosed multiple fractures in the Claimant's left knee. The authorized treating physician determined that the appropriate treatment to cure and relieve the

Employee: Betty L. Craig

Injury No. 09-086240

Claimant of the effects of the injury was a total knee replacement. Employer denied authorization for a total knee replacement. Claimant obtained the recommended treatment on her own as recommended by the authorized treating physician. The Employer, particularly the Employer's examining physician, gave opinions with regard to whether a total knee replacement was appropriate treatment, using a standard of whether the injury of October 28, 2009, was the prevailing factor in the Claimant's need for a total knee replacement. Employer's examining physician admitted that Claimant's treatment was appropriate because Claimant had arthritis as a pre-existing condition, not because she had the injury of October 28, 2009.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that Claimant's authorized treating physicians' opinions, who recommended total knee replacement in order to cure and relieve Claimant from the effects of the injury, was compelling and that the medical treatment administered to Claimant was reasonable and necessary in order to cure and relieve the Claimant from the effects of her injury. Claimant testified that she was physically active immediately prior to the accident and that she had been for a period of time subsequent to her 2003 treatment. Dr. Aggarwal testified that the treatment administered to the Claimant was the option of choice given the age and arthritic condition of the Claimant, and the fact that Claimant had multiple fractures in her left knee as a result of the accident of October 28, 2009.

If Claimant's work activities were the prevailing factor in causing Claimant's accident, Claimant is entitled to such reasonable and necessary medical treatment as will cure and relieve Claimant of the effects of the injury. The parties stipulated that Claimant's accident was compensable. Claimant's pre-existing condition does not alter Claimant's right to treatment pursuant to Chapter 287.

Employee: Betty L. Craig

Injury No. 09-086240

I find that Claimant's accident caused the injuries and disabilities for which benefits are now being claimed and that the medical treatment administered to the Claimant was reasonable and necessary in order to cure and relieve the effects of the injury. I further find that such medical treatment is the responsibility of the Employer.

I find this issue in favor of Claimant.

Whether the Employer is obligated to pay for past medical expenses?

Based on the rulings and findings set out above, I find that the medical treatment administered to Claimant was the responsibility of the Employer. Claimant presented substantial and competent evidence that Claimant incurred medical service charges totaling \$57,386.24. I further find that the charges made for the services rendered to the Claimant were reasonable and necessary and that Employer is liable for said expenses.

Employer is hereby ordered to reimburse Claimant in the amount of \$57,386.24, as and for medical expense incurred by the Claimant that should have been provided by the Employer.

I find this issue in favor of Claimant.

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

Dr. Aggarwal, Dr. Russell, and Dr. Lehman testified that it was possible that Claimant's total knee replacement may need revision in the future. No physician was able to say with certainty how long the knee apparatus would last. The amount of time the total knee replacement may function before it requires repair and/or replacement is not relevant.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, and further based on the rulings and findings set out above, I find there

Employee: Betty L. Craig

Injury No. 09-086240

is substantial and competent evidence that the Claimant will require medical care in the future because she has suffered a total knee replacement.

Employer is hereby ordered to provide such medical treatment in the future that may be recommended from time to time by Dr. Aggarwal, or any such physician to which Claimant may be referred to by Dr. Aggarwal, which pertains to the total knee replacement which Claimant has suffered as a result of this injury.

I find this issue in favor of Claimant.

The nature and extent of any permanent disabilities?

The only ratings presented in evidence in this hearing are the ratings of Dr. Russell. Dr. Russell rated Claimant's October 28, 2009, injury at 15% of the left knee. Dr. Russell rated Claimant's pre-existing left knee condition at 15% of the left knee. Claimant settled her first left knee injury claim for 17% of the left knee.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that Claimant suffered a pre-existing permanent partial disability of 17% of the left knee at the 160-week level. I further find that there is substantial and competent evidence that Claimant has suffered a permanent partial disability of 15% of the left knee as a result of the injury of October 28, 2009.

The parties stipulated that Claimant's compensation rate for permanent partial disability is \$422.97, the maximum allowed by law for the date of injury. Employer is hereby ordered to pay to Claimant the sum of \$10,151.28, [(160 weeks x 15% = 24 weeks) x \$422.97 = \$10,151.28], as and for permanent partial disability.

I find this issue in favor of Claimant.

Employee: Betty L. Craig

Injury No. 09-086240

The Claimant's attorney requested approval of an attorney fee of 25% of the amount of any award. Claimant's attorney's fee request is hereby approved. Claimant's attorney is awarded an attorney fee of 25% of the amount of this award. Claimant's attorney is hereby awarded a lien against the proceeds of this award unless and until the attorney fee shall have been paid in full.

Made by: _____
David L. Zerrer
Administrative Law Judge
Division of Workers' Compensation