

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

Injury No.: 01-168136

Employee: Kelvin Dudley  
Employer: Garco Wine Company  
Insurer: Zurich American Insurance Company  
Date of Accident: March 14, 2001  
Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 3, 2005. The award and decision of Administrative Law Judge Cornelius T. Lane, issued November 3, 2005, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 18<sup>th</sup> day of January 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Kelvin Dudley Injury No.: 01-168136

Dependents: N/A Before the  
**Division of Workers'**  
Employer: Garco Wine Company **Compensation**  
Department of Labor and Industrial  
Additional Party: N/A Relations of Missouri  
Jefferson City, Missouri  
Insurer: Zurich American Insurance Company  
Hearing Date: September 13, 2005 Checked by: CTL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: March 14, 2001
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:  
Twisted knee and fell.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Left knee
14. Nature and extent of any permanent disability: 2.5% permanent partial disability of the left knee
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? \$436.70

Employee: Kelvin Dudley Injury No.: 01-168136

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$446.05
19. Weekly compensation rate: \$297.37/\$297.37
20. Method wages computation: By agreement

### COMPENSATION PAYABLE

21. Amount of compensation payable:

4 weeks of permanent partial disability from Employer \$1,189.48

22. Second Injury Fund liability: No

TOTAL: \$1,189.48

23. Future requirements awarded: N/A

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:

Susan Brown

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

Employee:	Kelvin Dudley	Injury No.: 01-168136
Dependents:	N/A	Before the
Employer:	Garco Wine Company	<b>Division of Workers'</b>
Additional Party: N/A		<b>Compensation</b>
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Zurich American Insurance Company	Checked by: CTL:tr

### **PREFACE**

A hearing was held on the above-mentioned matter on September 13, 2005. Claimant, Kelvin Dudley, was represented by Attorney Susan Brown. The Employer/Insurer was represented by Attorney Craig Hansen.

### **ISSUES**

1. What is the nature and extent of permanent partial disability that Claimant sustained as a result of the injury of March 15, 2001 while in the employ of Garco Wine Company?
2. Whether Claimant is entitled to any temporary total disability and past medical expenses resulting from the injury sustained on March 15, 2001 while in the employ of Garco Wine Company?

### **EXHIBITS**

The Claimant offered the following exhibits:

- Exhibit A. Report of Injury.
- Exhibit B. Medical Records of Barnes Care.
- Exhibit C. Medical Records of Jewett Orthopedic Clinic, PA.
- Exhibit D. Medical Report of Dr. Shawn L. Berkin, D.O.
- Exhibit E. Deposition of Dr. Steven Stahle.
- Exhibit F. Medical Records of Des Peres Hospital.
- Exhibit G. Various Medical Bills.

The Employer offered the following exhibits:

- Exhibit 1. Claimant's Wage Statement from December 14, 2000 through March 15, 2001.
- Exhibit 2. Medical Records from Barnes Care of March 24, 2003.

### **FINDINGS OF FACT**

1. Claimant, while working for the Employer, Garco Wine Company, on March 14, 2001 twisted his left knee and Claimant reported the injury to his supervisor and the Employer referred Claimant to BJC Health Care for treatment.
2. Claimant had three appointments at Barnes Care but did not miss any work, and was not given any restrictions after his release.
3. Claimant left the employ of Garco Wine Company in December of 2002.
4. Claimant worked as a baseball umpire in the St. Louis area in 2001 and 2002 and attended an umpire academy in January 2003 in Florida.
5. Claimant testified that at the umpire school there was classroom work as well as participation and simulated games on the field. While at umpire school he noticed some problems with his left knee and was treated by Dr. Mintzer on January 17, 2003.
6. Dr. Mintzer, in January 2003, treated the Claimant for left knee pain and swelling while at umpire school and provided injection treatment for the Claimant.
7. Dr. Mintzer's records indicated that the Claimant did not provide any history of left knee injury in March of 2001 and stated that his treatment was following a history of problems while in the training program at the umpire school.
8. Claimant, when he returned to St. Louis, came under the care of Dr. Stahle who examined Claimant and recommended MRIs of both knees which showed no tears and medial compartment degeneration.
9. Dr. Stahle referred Claimant to Dr. Milne, an orthopedic surgeon.
10. Dr. Stahle, in his report, was unaware that the Claimant had some knee problems at umpire school and admitted that his report of December 9, 2004, fails to mention any intervening injury at the umpire school or any treatment the Claimant obtained at the Jewett Orthopedic Clinic in January 2003 when Claimant was at the umpire school.
11. Thus, Dr. Stahle admitted he could not state within a reasonable degree of medical certainty that the treatment of Claimant in 2003 and the subsequent surgery was caused by the March 2001 injury.
12. The medical records of Barnes Care shows that the Claimant was seen by Dr. Lee Heutel on March 15, 2001 who diagnosed a strain of the Claimant's left knee and after a couple treatments stated on March 29, 2001 that the Claimant's left knee strain was resolved and no further appointments had been scheduled.

### **RULINGS OF LAW**

I find from the substantial weight of the evidence:

1. That as a result of the March 14, 2001 work related injury Claimant sustained a 2 ½% disability of the left knee for a total of 4 weeks at \$297.37 per week for a total of \$1,189.48.
2. Claimant's injury sustained at umpire school and resulting knee operation was not related to his work related

injury of March 14, 2001 and therefore no benefits are awarded.

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

Cornelius T. Lane  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
*Director*  
*Division of Workers' Compensation*