

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

Injury No.: 04-124062

Employee: Ronald Fisher
Employer: Midwest Floor Company
Insurer: ACE Property & Casualty Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: December 2, 2004
Place and County of Accident: St. Louis County, 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 May 7, 2007. The award and decision of Administrative Law Judge Matthew D. Vacca, issued May 7, 2007, 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 4th day of October 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Ronald Fisher

Injury No.: 04-124062

Dependents: N/A
Employer: Midwest Floor Company
Additional Party: Second Injury Fund
Insurer: ACE Property & Casualty Ins. Co.
Hearing Date: February 23, 2007

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

Checked by: MDV: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: December 2, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
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 injured right knee while working as carpet layer.
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 leg
14. Nature and extent of any permanent disability: 50% of right knee
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Ronald Fisher Injury No.: 04-124062

17. Value necessary medical aid not furnished by employer/insurer? \$46,144.53
18. Employee's average weekly wages: \$955.70
19. Weekly compensation rate: \$637.14/\$354.05
20. Method wages computation: Agreed

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid past medical expenses: \$46,144.53

88 4/6 weeks of temporary total disability	\$56,493.08
80 weeks of permanent partial disability from Employer	\$28,324.00

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
 Weekly differential (\$283.09) payable by SIF for 80 weeks beginning
 August 26, 2005, and thereafter \$637.14 for Claimant's lifetime *

TOTAL: \$130,961.91 *

23. Future requirements awarded: See Award

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:

Frank Niesen

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Ronald Fisher	Injury No.:	04-124062
Dependents:	N/A	Before the	
Employer:	Midwest Floor Company	Division of Workers'	
Additional Party:	Second Injury Fund	Compensation	
		Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	ACE Property & Casualty Ins. Co.	Checked by:	MDV:tr

ISSUES PRESENTED

The issues presented for resolution by way of this proceeding were accident or occupational disease, arising out of and in the course of employment, medical causation, past due medical expenses, future medical expenses, the nature and extent of any temporary total disability benefits, the nature and extent of permanent disability, the liability of the Second Injury Fund and the statute of limitations.

FINDINGS OF FACT

1. Claimant is a 50 year old veteran and former Marine who served in Vietnam in 1969 and 1970. Claimant has

worked the last 38 years for Midwest Floor as a floor layer in the carpenter's union. His job entailed lifting bags of concrete and grout in 25 and 50 pound bags, mixing cement, laying sub floors and tiles, carrying tiles and tools. He spent 75% of his day on his knees and was required to repetitively squat and stoop and stand up.

2. In 1988, Claimant had a back injury while moving a roll of sheet vinyl. He was off work for several weeks and returned to work.
3. In 1990, he fell on the right knee. Claimant underwent a series of aspirations and treatments for his right knee over the years and in 1997 underwent a right knee meniscectomy.
4. Dr. Wagner treated Claimant following his 1990 knee injury to the right knee when he slipped and fell on a piece of marble. He suffered from patella tendon bursitis and was treated with aspirations, anti-inflammatories, and an injection of Depo Medrol and was off work for about a month.
5. In 1996 Claimant was off regular work, working in the office due to complications involving his knees. He returned after that to floor work and prior to the 1997 meniscectomy.
6. During that procedure, Claimant had a lateral release, the medial femoral condyle was shaved, the lateral femoral condyle was shaved, the patella and trochlea were smoothed and the surgeon excised a Baker's cyst.
7. Claimant was off work a couple months and returned to work performing his regular duties. His knee continued to give him significant difficulties at work with frequent swelling and required numerous aspirations.
8. In 1998, he had an injury where he twisted his right knee.
9. Claimant started having difficulty with his left wrist in the early 1990s and was diagnosed with rheumatoid arthritis. This affected his ability to work on his hands and knees and he underwent injections into the left wrist. Claimant suffered from left elbow bursitis in 1995.
10. Claimant wore a back brace for his back condition and a wrist brace for his left wrist condition. Claimant also wore knee pads at work.
11. On December 2, 2004, Claimant slipped while working on a job. That is the injury under consideration here. He told the Employer he injured his knee and needed a helper and needed to file a workers' compensation claim. The Employer said the only help we can give you is workers' compensation. The Employer asked Claimant to stay a little longer because it was a busy time for them. Claimant iced up the knee and got an apprentice and found it extremely difficult to work. His apprentice was taken away on December 13, 2004 and Claimant's right knee locked up while working, he hopped to the truck, called his supervisor and told him that Claimant was finished, unable to work anymore. Claimant was sent to Dr. Rende who looked at Dr. Berni's x-rays of Claimant's knees and said it was not work related. The claim was filed January 14, 2005 and Dr. Berni did a full knee replacement in February of 2005. He last saw Dr. Berni on January 8, 2007 for a maintenance cortisone injection.
12. In December of 2005, Claimant filed a Claim for Compensation regarding his left and right knees. Dr. Berni surgically replaced the right knee on February 28, 2005. He diagnosed osteoarthritis on the basis of subchondral cysts and spurs.
13. Dr. Volarich concurred in the osteoarthritis diagnosis determining that rheumatoid arthritis affects the upper extremities more than the lower and also would be symmetric and since Claimant only had dominant right side knee problems that he suffered from degenerative arthritis rather than rheumatoid arthritis.
14. Dr. Volarich also testified that floor layers who work longer than 25 years all seem to have a high incidence of knee osteoarthritis. Claimant has been performing the job for 38 years.
15. Dr. Rende opined on behalf of the Employer that Claimant suffered only from rheumatoid arthritis but his testimony was not particularly credible. He previously diagnosed severe degenerative arthritis and old age as causing the knee problems, but changed his opinion to rheumatoid arthritis at the deposition.
16. Claimant fractured his pelvis in 1997 in a four-wheeler accident. He was off work 2 ½ months and continued to suffer pain and stiffness of the hip and back which interfered with his work over the years.
17. Joyce Parsons, an employee benefits supervisor for Employer, testified that of the 60 to 70 employees in the field doing work similar to Claimant's, none of them had claimed work related degenerative arthritic conditions in their knees from work although many had knee injuries.

18. Dr. Berni testified that carpet layers and baseball catchers have a pre-disposition for degenerative knee joint disease. Dr. Berni believes that Claimant's floor laying was a substantial factor in the development of his knee osteoarthritis. Dr. Berni testified that it is Claimant's rheumatoid arthritis working with his osteoarthritis that is causing his inability to return to gainful employment.
19. Claimant's rheumatoid arthritis is severe. He had failed most medications by December of 1999. He had failed multiple non-steroidal anti-inflammatory drugs, Methotrexate, Arava, and Enbrel, and was proposing to the insurance company that he try extracorporeal immunoadsorption with ProSORBA column for treatment of rheumatoid arthritis. This treatment is for moderate to severe rheumatoid arthritis sufferers with longstanding disease if they have failed or are intolerant to anti-rheumatic drugs.
20. Dr. Volarich rated Claimant's disability at 80% of the right lower extremity at the knee, 50% of the left lower extremity at the knee, and 20% preexisting referencing the lumbosacral spine and fractured pelvis, and 15% for rheumatoid arthritis.
21. Dr. Volarich believed that Claimant was unable to engage in any substantial gainful employment and was permanently and totally disabled as a result of the work related knee injury in December of 2004 in combination with preexisting medical conditions. He did not feel that the Claimant was permanently and totally disabled considering the right knee alone.

RULINGS OF LAW

1. Claimant sustained an accident which arose out of and in the course of his employment with Midwest Floor when he injured his right knee on December 2, 2004 while working.
2. His right knee complaints are medically and causally related to his work as a floor layer at Midwest Floor. His left knee complaints are not.
3. Claimant is entitled to past medical expenses in the amount of \$46,144.53 for his right knee treatment.
4. Claimant is entitled to future medical care to cure and relieve him of the effects of the right knee injury to include another knee replacement.
5. Claimant is entitled to temporary total disability benefits from December 14, 2004 until he reached MMI on August 26, 2005.
6. Claimant has sustained a 50% permanent partial disability at the level of the right knee. After that date the treatment appeared to be primarily maintenance and palliative care.
7. Claimant is permanently and totally disabled following the injuries sustained while working for Employer.
8. It was not the last injury in and of itself which caused Claimant to become permanently and totally disabled. Therefore, liability for the permanent and total disability falls upon the Second Injury Fund.
9. Claimant filed his claim within the applicable statute of limitations. His claim was filed less than two months after the injury.

DISCUSSION

Claimant clearly suffers from very severe rheumatoid arthritis which was affecting his back, wrists, elbows and both knees before the instant accident. Then in 1997, he had a right knee meniscectomy following a work injury. The rheumatoid arthritis continued to deteriorate his joints and degenerative work related arthritis from repetitive trauma also began afflicting the right knee. Then in December of 2004 he slipped and further injured the already compromised right knee. Following surgery that was required in substantial part because of that work related degenerative condition and the injury, Claimant was unable to return to any suitable gainful employment. He is unable to physically compete for any jobs in the open labor market for which he is reasonably qualified by virtue of his age, education and transferable skills. He is permanently and totally disabled by virtue of all of his disabilities.

I believe he suffers from severe rheumatoid arthritis that is not work related but superimposed upon that condition is a

work related right degenerative osteoarthritis consistent with Dr. Volarich's and Dr. Berni's opinions which resulted from work related wear and tear and to which is added and which culminated in the traumatic right knee injury on December 2, 2004.

Claimant is a Marine who worked 38 years in a tough job on his knees. His right knee took a beating and the preexisting rheumatoid arthritis helped weaken the knee so the work related degenerative arthritis and last accident would all work to collapse the right knee joint. Following that, and taking into account all his disabilities, Claimant became unemployable in the open labor market.

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Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation