

Issued by THE LABOR AND INDUSTRIAL RELATIONS
COMMISSION

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge
by Separate Opinion)

Injury No.: 05-099387

Employee: Danny F. Green
Employer: Platte County
Insurer: Mid America Regional Council Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of the 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. We have reviewed the evidence and briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the March 2, 2009, award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminary Matters

The administrative law judge heard this matter to consider 1) future medical benefits; 2) nature and extent of disability; 3) medical mileage reimbursement; and 4) temporary total disability.

The administrative law judge found that employee did not show that there is a reasonable probability that he will need future medical care and, therefore, denied employee's request for the same. The administrative law judge's denial of future medical benefits rendered moot the issue of whether employee would be entitled to temporary total disability benefits should any future medical be provided and prevent employee from working. The administrative law judge found employee's permanent partial disability of his left lower extremity to be 23.5%. Lastly, the administrative law judge found that employee did not travel outside of his "local or metropolitan area" to seek any medical treatment for the injury and, therefore, denied employee's request for reimbursement expenses for the mileage employee traveled.

The employee appealed to the Commission alleging the administrative law judge erred in denying employee future medical benefits and medical mileage reimbursement.

Summary of Facts

The findings of fact and stipulations of the parties were accurately recounted in the award of the administrative law judge and are adopted by the Commission along with the additional facts listed below.

The administrative law judge correctly stated in his award that Dr. Koprivica indicated it was probable that employee would need anti-inflammatory medications in the future. However, the administrative law judge did not include other pertinent portions of Dr. Koprivica's opinion. Dr. Koprivica opined that employee will have progression of post-traumatic degenerative arthritis as a direct result of the injury and the surgery that has been necessary and

future treatment considerations include consideration of repeat intra-articular steroid injections. Additional considerations would also include Synvisc Injections and the ultimate concern would be the need for total knee arthroplasty. Dr. Koprivica opined that at employee's young age, revision arthroplasty is also a future consideration. Lastly, Dr. Koprivica stated that "[l]eaving medical open to address these future needs in light of the difficulty of predicting when intervention will be necessary and its precise nature would be recommended."

The administrative law judge also stated in his award that Dr. Hartley had opined that if employee's symptoms became worse, he would recommend additional diagnostic workup. Dr. Hartley also said that if employee's present symptoms persisted or increased, his recommendation would include "treatment of physical therapy for range of motion, strengthening of the left lower extremity, symptomatic modalities and walking aids. In addition, the use of non-steroid anti-inflammatory agents, injections, visco-supplementation agents or consideration of joint injection of cortisone would not be inappropriate, depending on the diagnostic information provided. Continued bracing of the extremity will be necessary presently and continued in the future." Lastly, Dr. Hartley stated that if employee's present symptoms continue to persist, or increase, that his recommendation would include, but not be limited to, "repeat left knee examination under anesthesia, arthroscopy, arthroscopic cartilaginous debridement and arthroscopic meniscectomy versus meniscal repair and/or ACL shrinkage or reconstruction." Additionally, proximal tibial osteotomy, unicompartmental arthroplasty, and total knee arthroplasty may be needed in the future with anticipated degeneration of the knee joint surface.

Conclusions of Law

I. Future Medical

Section 287.140.1 RSMo requires that the employer provide "such medical, surgical, chiropractic and hospital treatment...as may reasonably be required...to cure and relieve [the employee] from the effects of the injury." This has been held to mean that the worker is entitled to treatment that gives comfort or relieves even though restoration to soundness [a cure] is beyond avail. *Bowers v. Highland Dairy Co.*, 132 S.W.3d 260, 266 (Mo. App. 2004); *Mathia v. Contract Freighters, Inc.*, 929 S.W.2d 271, 277 (Mo. App. 1996). The employee must prove beyond speculation and by competent and substantial evidence that his or her work related injury is in need of treatment. *Williams v. A.B. Chance Co.*, 676 S.W.2d 1 (Mo. App. 1984). However, conclusive evidence is not required. It is sufficient if employee shows by reasonable probability that he or she is in need of additional medical treatment. *Bowers*, 132 S.W.3d at 270.

In the present case, it is clear that the competent and substantial medical evidence provided by Drs. Koprivica and Hartley prove beyond speculation that employee's work related injury is in need of future medical treatment. On the other hand, employer's medical evidence is silent on the subject of future medical evidence. For the foregoing reasons, the Commission finds that employee is entitled to future medical benefits.

II. Medical Mileage Reimbursement

Section 287.140.1 RSMo. provides:

When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of [injury or the place of his residence] employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer....

Because employee's principal place of employment is Platte City and his place of residence is even further north of Platte City and the Sheriff's Office, the doctor's visits are not local, especially when he has to drive 47 and 63 miles to and from the appointments. Furthermore, the Commission finds that Overland Park, Kansas and the adjoining counties of Clay and Jackson, are not part of the "metropolitan area" of Platte City. For the foregoing reasons, the

Commission finds that employee is entitled to medical mileage reimbursement.

Upon careful review of the entire record and relevant Missouri law, the Commission determines and concludes that, pursuant to section 287.140.1 RSMo, employee is entitled to future medical benefits and medical mileage reimbursement.

Award

We modify the award of the administrative law judge on the issues of employee's future medical benefits and medical mileage reimbursement. Employee is entitled to both future medical benefits and medical mileage reimbursement to be paid by employer. In all other respects, we affirm the award.

The award and decision of Administrative Law Judge Carl Mueller issued March 2, 2009, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

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

Given at Jefferson City, State of Missouri, this 2nd day of September 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

FINAL AWARD

Employee: Danny F. Green

Injury No: 05-099387

Dependents: N/A

Employer: Platte County

Additional Party: State Treasurer as Custodian of the Second Injury Fund

Insurer: Mid America Regional Council Insurance Trust

Temporary Disability

26 and 4/7s weeks \$12,901.41
Less credit for benefits already paid (\$12,901.41)
Total TTD Owing \$0.00

Permanent Partial Disability

23.5% disability of left knee (.235 x 160 weeks) x \$365.08/week .. \$13,727.01

Total Award: \$13,727.01

22. Second Injury Fund liability: None. The claim against the State Treasurer as Custodian of the Second Injury Fund is dismissed pursuant to the request of claimant’s counsel made at the commencement of the hearing.

23. Future requirements awarded: None

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 totaling \$3,431.75 in favor of Frank Eppright, Attorney, for reasonable and necessary attorney’s fees pursuant to Mo.Rev.Stat. §287.260.1.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Danny F. Green Injury No: 05-099387
Dependents: N/A
Employer: Platte County
Additional Party: State Treasurer as Custodian of the Second Injury Fund
Insurer: Mid America Regional Council Insurance Trust
Hearing Date: January 28, 2009 Checked by: RCM/rm

On January 28, 2009, the employee and employer appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The employee, Mr. Danny F. Green appeared in person and with counsel, Frank Eppright. The employer, Platte County, and its insurer, Mid America Regional Council Insurance Trust, appeared through Kip A. Kubin. Counsel for the Employee requested that the Claim against the State Treasurer as Custodian of the Second Injury Fund be dismissed. The primary issues the parties requested the Division to determine were whether Platte County must provide Mr. Green with additional medical care; whether it must reimburse his mileage expenses; and whether he suffered any disability and, if so, how much? For the reasons noted below, I find that Platte County need not provide Mr. Green with any additional medical; that his mileage is not reimbursable; and that he sustained twenty three and one-half percent (23½%) permanent disability of his left lower extremity at the 160-week

level. Thus Mr. Green's award totals \$13,727.01.

STIPULATIONS

The parties stipulated that:

- On or about September 25, 2005 ("the injury date"), Platte County ("County") was an employer operating subject to Missouri's Workers' Compensation law with its liability fully insured by the Mid America Regional Council Insurance Trust ("MARCIT");
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- Mr. Green was an employee of the County working subject to the law in Kansas City, Platte County, Missouri;
-
- Mr. Green sustained an accident arising out of and in the course of his employment with the County;
-
- Mr. Green both notified the County of his injury and filed his claim within the time allowed by law;
-
- The County paid Mr. Green temporary total disability compensation totaling \$12,901.41; and,
-
- The County provided Mr. Green with medical care costing \$26,631.43. The claimant does not seek any reimbursement for medical expenses but does seek reimbursement for medical mileage in the amount of \$1,210.25. This is for 3,227.32 miles traveled in going to and from medical care authorized by the employer at a reimbursement rate of \$0.375 per mile.

ISSUES

The parties requested the Division to determine:

- Whether Platte County must provide the employee with additional medical care?
- Whether Mr. Green suffered any disability and, if so, the nature and extent of the Employee's disability?
- Whether Platte County must reimburse to Mr. Green mileage expenses totaling \$1, 210.25?
- Whether Mr. Green may receive TTD should future medical be provided and he is unable to work?
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FINDINGS OF FACT

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

- A – Report, P. Brent Koprivica, May 1, 2007
- B – Report, Mark Hartley, MD, March 21, 2008
- C – Report, Mark Hartley, MD, September 22, 2008
- D – Medical Records, Northland Imaging
- E – Medical Records, Northland Bone & Joint
- F – Medical Records, Daniel D. Weed, MD
- G – Medical Records, Platted Medical Clinic
- H – Medical Records, Corporate Care
- I – Medical Records, North Kansas City Hospital
- J – Medical Records, St. Luke's Northland Hospital
- K – Medical Records, Creekwood Surgery Center
- L – Mileage Reimbursement Request
- M – Curriculum Vitae, Mark Hartley, MD

Although the employer did not call any witnesses, it did present the following exhibits, all of which were admitted into evidence without objection:

- 1 – Rating Report, Steven B. Smith, MD, May 25, 2006
- 2 – Report, Thomas S. Samuelson, MD, December 11, 2006

The court also marked and admitted, without objection, Court Exhibit 1, which is a copy of the Missouri Official Highway Map, 2005-2006 (Kansas City Area).

Based on the above exhibits and the testimony of Mr. Green, the court makes the following findings of fact. Mr. Green is a 30 year old law enforcement officer. He graduated from high school in 1996 and received an Associate of Sciences degree from Missouri Western College in May 1999. He attended the police academy and completed his training in December 2000.

Mr. Green started work for the Platte County Sheriff's department on March 13, 2001. He continued to work as a deputy sheriff until August 2008 when he went to work for the Kirkwood Missouri Police Department. During his employment with Platte County he was stationed at the sheriff's office, located at 415 Third Street, Platte City, Missouri.

It was stipulated by the parties that Mr. Green was injured on September 25, 2005 when he fell scaling a fence. He sustained an injury to his left knee in the accident. He sought initial medical care with St. Luke's Northland Hospital and was diagnosed with a probable fracture to the tibial plateau in his left knee. He was later diagnosed with an anterior cruciate ligament injury in the same knee. His care was transferred to Dr. Steven Smith, an orthopedic surgeon. Dr. Smith performed surgery on the employee's left knee on October 17, 2005. After rehabilitation, the employee was allowed to return to full duties on April 3, 2006. He was released from Dr. Smith's care on May 15, 2006 and given a rating of 12% permanent partial disability to the knee by the doctor. *See*, Employer's Exhibit 1.

After returning to full duty, Mr. Green continued to experience problems with his knee. He returned to Dr. Smith and had a steroid injection to the knee. He reported the injection did not help him. He then was seen by Dr. Thomas Samuelson, another orthopedic surgeon, for a second opinion on his knee. Dr. Samuelson also felt the employee was at maximum medical improvement. *See*, Employer's Exhibit 2 at 3. Neither of the physicians suggested any additional active care. However, Dr. Smith did give the employee a prescription for an anti-inflammatory medication, Ultram.

P. Brent Koprivica, MD examined Mr. Green on May 1, 2007 at his attorney's request. Dr. Koprivica reviewed

medical records, diagnostic films and examined the employee. He opined that Mr. Green had a 35% permanent disability to the left knee. *See*, Claimant's Exhibit A at 11. He also indicated that it was probable that the claimant would need anti-inflammatory medications in the future.

His attorney also sent the employee to Dr. Mark Hartley, an orthopedic surgeon. Dr. Hartley saw the patient on March 21, 2008. Dr. Hartley opined that the employee "has a permanent partial disability of between 43%-47% at the 160-week level of the knee." *See*, Claimant's Exhibit B at 9. Dr. Hartley also suggested additional diagnostic workup if the employee's symptoms became worse.

The employee was a very credible witness. Based on his testimony, I find that Mr. Green left his employment at Platte County when his wife, a pediatrician, accepted a position in St. Louis. Mr. Green now is employed as a police officer for the City of Kirkwood, Missouri. He still has popping and grinding in his knee. Getting in and out of his vehicle causes him discomfort, as well as standing or sitting for long periods of time and climbing stairs. Mr. Green works 8 to 12 hour shifts with his current employer. He is not taking any prescription medications for his knee, but does use Tylenol, Advil and aspirin on an as needed basis. He has not sought any medical care for the knee since his last visit with Dr. Smith.

At the time of his accident, Mr. Green lived in Dearborn, Missouri. This is just north of Platte City and south of the Buchanan County line. Additionally, his principal place of employment was the Platte County Sheriff's Department, to which he reported every day and which is adjacent to the Platte County Court House. Most of Mr. Green's doctor's appointments either were in southern Platte County or Clay County with the exception of his appointments with Dr. Samuelson who offices in Overland Park, Kansas. Mr. Green confirmed that his Dearborn residence, the Sheriff's Department, and the medical providers he traveled to all are located within the "Kansas City Area" inset map contained in Missouri's Official Highway Map for 2005-2006. *See*, Court's Exhibit 1 at 2.

RULINGS OF LAW

The court is called upon to decide 4 issues in this claim. The first issue is whether Platte County must provide the Employee with additional medical care. The court has reviewed the opinions of Drs. Smith, Samuelson, Koprivica and Hartley. None of these doctors indicate any current need for medical treatment. Dr. Hartley suggests that additional diagnostic tests should be considered if Mr. Green's symptoms become worse. However, the complaints made by Mr. Green at the hearing, seem to be substantially the same as the complaints documented by the physicians who have examined him. There is no suggestion by any of the doctors of any course of care that will cure or relieve his symptoms. Therefore, the preponderance of the evidence persuades the court that the employee does not have any immediate need for medical treatment. In addition, I find that Claimant did not show that there is a reasonable probability that he will need future medical care. Dean v. St. Luke's Hospital, 936 S.W.2d 601 (1997). The request of the employee for medical care is denied.

Regarding his claim for disability, three doctors offered their opinions on that issue. Dr. Smith found the Claimant to have 12% disability, Dr. Koprivica found the Claimant to have 35% disability, and Dr. Hartley found the Claimant to have 43% to 47% disability (all at the 160-week level). The court finds that none of these opinions accurately assess the Claimant's disability. Instead, I find that Mr. Green sustained twenty three and one-half percent (23½%) permanent disability of his left lower extremity at the 160-week level for compensation totaling \$13,727.01.

The last issue involves reimbursement of medical mileage. Missouri law provides, in pertinent part, that:

When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses . . .

The statute gives no guidance on what constitutes a “local or metropolitan area”, nor is there any case law that defines this term in Chapter 287. However, even though there is no case law that directly defines the terms in the statute, there are cases that are persuasive. Both Missouri’s Supreme Court and the Western District Court of Appeals have recognized that adjacent counties – including Johnson County, Kansas – are part of the Kansas City, Missouri Metropolitan area. See, Loftus v. Lee, 308 S.W.2d 654, 657 (Mo. 1958) and Kuluga v. Kuluga, 149 S.W.3d 570 (Mo.App. W.D. 2004). And, although not holding that Platte County is part of the metropolitan area, the Court certainly indicates such in dicta in Property Tax Representatives, Inc v. Chatam 891 S.W.2d 153 (Mo.App. W.D. 1995), and Love v. Love, 75 S.W.3d 747 (Mo.App. W.D. 2002).

Although the legislature did not define the term “local or metropolitan area” I find these cases indicate that it is reasonable to conclude that Mr. Green’s Dearborn residence, the Platte County Sherriff’s Department, and all the medical providers he received treatment from – including Dr. Samuelson in Johnson County, Kansas – all are located within the same “local or metropolitan area.” In addition, using Missouri’s Official Highway Map provides an additional – and objective – way to determine what areas in included in the Kansas City Metropolitan area. Mr. Green confirmed that his residence, the Sheriff’s Department and all of the medical providers are located within the “Kansas City Area” inset map this, too, supports the finding that they all are located within the same “local or metropolitan area”. Thus, I deny his request for mileage reimbursement.

In summary, I order the County and its insurer to provide Mr. Green with thirty-seven and six-tenths (37.6) weeks permanent partial disability benefits for permanent disability compensation totaling \$13,727.01. Claimant’s request for additional medical care and mileage reimbursement is denied. Claimant’s attorney requested a fee equal to twenty five percent (25%) of all amounts awarded. I find that such request is fair and reasonable and order a lien attach to this award for \$3,431.75 until paid in full. Finally, the claim against the Second Injury Fund is dismissed with prejudice pursuant to the request of Claimant’s counsel made at the commencement of the hearing.

Date: _____

Made by: _____

Carl Mueller
Administrative Law Judge
Division of Workers’ Compensation

A true copy: Attest:

Peter Lyskowski
Acting Director
Division of Workers’ Compensation

(160 weeks x .235) x \$365.08