

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

Injury No.: 08-002381

Employee: Robert Gregory  
Employer: Modine Manufacturing  
Insurer: Sentry Insurance  
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 November 28, 2011. The award and decision of Administrative Law Judge Karen Fisher, issued November 28, 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 19<sup>th</sup> day of June 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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DISSENTING OPINION FILED  
James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

Employee: Robert Gregory

### **DISSENTING OPINION**

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge (ALJ) should be reversed because employee failed to prove that the January 10, 2008, accident was the prevailing factor in causing his injury.

#### **Facts**

Employee's history of problems with his left knee began over 30 years prior to the January 10, 2008, work accident. When employee was approximately 32 or 33 years old he jammed his knee while sliding into second base during a softball game. This incident resulted in noticeable swelling. Approximately 10 years later employee had a flare up of pain in his left knee, but he could never identify what triggered this incident. However, the pain was severe enough to cause employee to go to a doctor for a cortisone injection. Employee had a third occasion of left knee pain in the 1990s, which again led him to the doctor for another cortisone injection. Employee could not identify what caused the onset of symptoms for this incident either.

Employee injured his knee as a result of a fall in November 2007, which was the fourth prior incident affecting his left knee. This injury caused sufficient pain and employee immediately sought medical treatment. Dr. Grantham diagnosed a torn medial meniscus and performed surgery to repair the knee on December 14, 2007.

Employee had a follow-up appointment with Dr. Grantham on December 27, 2007. The office note from that visit indicates that employee was doing well, but Dr. Grantham told employee to continue his rehab on the knee and "continue with activity and work restrictions." Employee was to follow-up with Dr. Grantham again in four weeks, which would have been January 24, 2008.

Before employee could follow-up with Dr. Grantham regarding his left knee condition, he sustained a new fall on January 10, 2008. The incident occurred when employee was checking inventory in the plant and tripped on a piece of weld wire. When he tripped, employee twisted his left knee and fell to the floor on his left knee. The following day employee was sent to the Freeman Occumed clinic for his complaints of left knee pain.

Employee was seen again at the Occumed clinic on January 18, 2008. At the visit, x-rays were taken and employee was told to follow-up with Dr. Grantham because the problems he was having in his left knee were related to the 2007 surgery, not the January 10, 2008, fall. Employee followed up with Dr. Grantham on January 24, 2008. Employee was released from treatment by Dr. Grantham at the January 24, 2008, office visit.

Employee next sought medical care in March 2008 with a chiropractor, Dr. Carson. Dr. Carson's office note of March 7, 2008, contains the entry: "Knee surgery December 2007, went to PT times two, slipped three to four weeks later, reinjured left knee, then played golf, aggravated knee."

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Employee returned to Dr. Grantham on March 18, 2008. Employee related to Dr. Grantham that his knee had gotten better after the 2007 surgery and the 2008 incident, but had started bothering him again recently. Employee underwent another left knee surgery by Dr. Grantham on April 21, 2008. Employee improved after the surgery, but eventually had a return of pain in the knee. Employee was released from Dr. Grantham's care in July 2008, but returned again in August 2008 with renewed symptoms. Dr. Grantham noted that employee returned with complaints of increased pain over the medial aspect of his left knee after playing golf.

Employee eventually treated with Dr. Black, who performed a total knee arthroplasty on March 23, 2009. Employee was released from Dr. Black's care in July 2009. Dr. Black wrote a letter dated April 20, 2009, in which he stated that employee's total knee arthroplasty was related to the January 2008 fall.

Employee underwent an independent medical evaluation by Dr. Swaim. Dr. Swaim opined that the January 10, 2008, occupational injury caused the left knee condition that led to all of the treatment received thereafter. He rated employee's permanent partial disability at 35% rated at the left knee.

Dr. Estep was the first doctor to evaluate employee following the work incident on January 10, 2008. Dr. Estep opined that the prevailing factor in the employee's difficulties at that time was not the alleged work event, but postsurgical difficulty from the December 2007 procedure.

Dr. Roeder performed an independent medical evaluation on January 13, 2010. Dr. Roeder stated: "It is clear that [employee] ultimately had substantial degenerative changes in his knee, requiring knee replacement." With regard to causation, Dr. Roeder stated that "the degenerative changes and possible avascular necrosis were present prior to the injury on 01/10/08. I think these preexisting changes are the prevailing factor in the need for the knee replacement. It is my opinion that the work incident on 01/10/08 was not the prevailing factor in leading to the treatment [employee] received, including the total knee arthroplasty."

Dr. Burleigh also saw employee at the Occumed clinic. He saw employee on January 18, 2008, and included in his note that work was not the prevailing factor in employee's condition.

### **Discussion**

First of all, it is important to note that employee's alleged injury occurred on January 10, 2008. Therefore, this case falls under the purview of the 2005 amendments to Missouri Workers' Compensation Law.

Section 287.120 RSMo<sup>1</sup> "requires employers to furnish compensation according to the provisions of the Workers' Compensation Law for personal injuries of employees caused by accidents arising out of and in the course of the employee's employment." *Gordon v. City of Ellisville*, 268 S.W.3d 454, 458-59 (Mo. App. 2008).

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<sup>1</sup> Statutory references are to the Revised Statutes of Missouri 2007 unless otherwise indicated.

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Section 287.020.2 RSMo defines “accident” as: “An unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.”

Pursuant to § 287.020.3 RSMo, an “injury” is defined to be “an injury which has arisen out of and in the course of employment.” Section 287.020.3(1) RSMo further states that:

“An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. ‘The prevailing factor’ is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.”

It is employee’s “burden to prove all essential elements of his claim, including a causal connection between the injury and the job.” *Bond v. Site Line Surveying*, 322 S.W.3d 165, 170 (Mo. App. 2010). Therefore, the primary issue in this case is whether employee met his burden of establishing that the January 10, 2008, incident was the prevailing factor in causing the injury.

I do not believe employee met his burden of proof that his injury arose out of and in the course of his employment because the great weight of the evidence established that the January 10, 2008, incident was not the prevailing factor in causing employee’s injury to his left knee. In my opinion, the January 10, 2008, incident was merely a triggering or precipitating factor relating back to employee’s history of left knee problems and, more specifically, the December 2007 surgery for which employee was still treating with Dr. Grantham.

The opinions of Dr. Estep, Dr. Roeder, and Dr. Burleigh are more credible than Drs. Swaim and Black. Dr. Estep had the unique perspective of seeing employee within a day of the January 10, 2008, work incident and he believed that the prevailing factor in causing his injury was his postsurgical difficulty, not the work incident. Dr. Estep had contemporaneous information about the status of employee’s knee before the event and about any change in the knee right after the event.

Dr. Roeder noted that employee’s knee condition was caused by his preexisting degenerative condition. He opined that the January 10, 2008, incident was not the prevailing factor in causing employee’s injury. Dr. Roeder noted that the physiological problems in employee’s knee were not solved by the December 2007 surgery because employee was continuing to have problems on the date of the alleged incident.

Dr. Burleigh set out his opinion in the “Workers’ Compensation Treatment Form” completed during employee’s January 18, 2008, visit. Dr. Burleigh marked the box indicating that the work incident was “Not Prevailing Factor.” Dr. Burleigh’s medical causation opinion is further evidenced by his impression of employee’s x-ray results, which indicate employee had “postoperative symptomatology.”

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Drs. Swaim and Black's opinions should be given less weight. Dr. Swaim conceded that a number of different factors could have caused employee's knee injury, including employee's obesity, degenerative changes prior to January 2008, or an osteochondral defect that may have also preexisted the January 10, 2008, incident. In addition to the aforementioned, Dr. Swaim provided his opinions without the knowledge of employee's left knee problems occurring prior to the November 2007 fall.

Dr. Black simply found employee's "total knee arthroplasty to be related to his fall." Dr. Black's opinion fails to meet the level of proof required of § 287.020.3 RSMo, which requires the prevailing factor to be "the primary factor in relation to any other factor." Without more, Dr. Black's opinion could simply mean that he believes the January 10, 2008, incident was a "triggering" or "precipitating" factor, which would not be compensable.

For the foregoing reasons, I find that the great weight of the evidence establishes that employee failed to meet his burden of proving that the January 10, 2008, work incident was the prevailing factor in causing his left knee condition. As such, I would reverse the award of the ALJ and issue a final award denying compensation.

I respectfully dissent from the decision of the majority of the Commission.

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James Avery, Member

# AWARD

Employee: Robert Gregory

Injury No : 08-002381

Dependents: N/A

Employer: Modine Manufacturing

Additional Party: Second Injury Fund

Insurer: Sentry Insurance

Hearing Date: July 12, 2011

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by:

## FINDINGS OF FACT AND CONCLUSIONS 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: JANUARY 10, 2008
5. State location where accident occurred or occupational disease was contracted: JASPER COUNTY, MO
6. Was the above employee in employ of above employer at the 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 insured? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted.  
CHECKING INVENTORY, TRIPPED ON PIECE OF WELD WIRE
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease RIGHT KNEE
14. Nature and extent of any permanent partial disability: 20 PERCENT RIGHT KNEE
15. Compensation paid to date for temporary disability : NONE
16. Value of necessary medical aid paid to date by employer/insurer? NONE
17. Value of necessary medical aid not furnished by employer/insurer? \$17,947.62
18. Employee's average weekly wages: \$915.38

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19. Weekly compensation rate: \$610.25 / \$389.04

20. Method of wage computation: STATUTORY

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$17,947.62

15.29 weeks of temporary total disability (or temporary partial disability) \$9,330.72

32 weeks of permanent partial disability from Employer \$12,449.28

-0- weeks of disfigurement from Employer

22. Second Injury Fund liability: 14.264 WEEKS (\$5,549.27)

TOTAL: \$45,276.89

23. Future requirements awarded: FUTURE MEDICAL

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 PERCENT of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

**MATTHEW WEBSTER**

Employee: Robert Gregory

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

Employee: Robert Gregory

Injury No : 08-002381

Dependents: N/A

Employer: Modine Manufacturing

Additional Party: Second Injury Fund

Insurer: Sentry Insurance

Hearing Date: July 12, 2011

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by:

## **AWARD**

### **Introduction**

The parties presented evidence at a hearing on July 12, 2011. Claimant appeared in person and with his attorney, Matthew B. Webster. Employer and Insurer appeared through their attorney, Ronald Sparlin. The Second Injury Fund appeared through its attorney, Assistant Attorney General Eric Cummins.

### **Stipulations**

The parties presented the following issues for determination:

1. Whether Claimant sustained an injury by accident arising out of and in the course and scope of employment.
2. Whether Claimant's current physical condition was caused by his alleged accidental injury at work.

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3. Whether Claimant is entitled to temporary total disability benefits from March 23, 2009, to July 6, 2009.
4. Whether Claimant is entitled to past medical bills totally \$17,947.62 (\$3,183.10 out of pocket and \$14,764.52 Medicare).
5. Whether claimant is entitled to future medical benefits.
6. The nature and extent of claimant's injuries.
7. The liability of the Second Injury Fund with Claimant alleging permanent partial liability.

The parties agreed that Claimant's average weekly wage was \$915.38, that the workers' compensation rate was \$610.25 for temporary total disability benefits and \$389.04 for permanent partial disability benefits.

### **Findings of Fact**

Claimant, Robert Gregory, is a sixty-eight year old man who had worked for Employer, Modine Manufacturing, since January 15, 1979. Mr. Gregory had held several different jobs for Employer during his employment but had last worked as a material and production planner, a job that involved purchasing materials necessary for both production and nonproduction activities in the plant. Claimant had an office where he spent approximately ninety percent of his time. However, Claimant would periodically have to go onto the floor to check inventories or look at various designs.

Claimant alleged that he sustained an injury to his left knee in an accident that occurred on January 10, 2008 while working for Employer. Mr. Gregory was out on the floor checking some inventory when, while walking down an aisle, his feet got tangled up in a piece of weld wire, one end of which was under a pallet and one end of which was loose. Claimant twisted his

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left knee as he tripped on the wire. Mr. Gregory fell to the ground striking his left knee on the concrete. Claimant had immediate and severe pain in his left knee. He went from having no pain to severe pain.

Claimant had previously injured his left knee approximately thirty years prior sliding into second base in a softball game. This did not require him to seek medical attention as his knee had swelled up for a couple of days and then returned to normal.

Claimant had some pain in his left knee in the mid 1980s and went to Dr. Gregory who gave him a cortisone shot. Claimant believed he had also had a cortisone shot into his left knee on one other occasion due to some pain he was having. However, Claimant testified how his pain had resolved following the cortisone injections and had left him with no ongoing pain or limitations prior to 2007.

In November of 2007, Claimant fell in a parking lot injuring his left knee. Mr. Gregory sought treatment with Dr. Grantham who, on December 14, 2007 performed a surgery to repair a torn medial meniscus. Claimant followed up with Dr. Grantham on December 27, 2007 at which time Dr. Grantham's note reflects Claimant reported he was doing well and reported no complaints. Claimant only missed the day of surgery and one other day from work as a result of this injury. Claimant testified that just before his fall on January 10, 2008, his left knee was doing well. Mr. Gregory was not having any more pain in the knee, and was not taking any medication for the knee. He was back to doing his regular job without any limitation. Claimant testified that he did have some ongoing stiffness in his left leg but that it was improving daily prior to January 10, 2008. Claimant further testified that he continued to limp, but only slightly prior to his fall on January 10, 2008.

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Claimant testified he began suffering from severe pain immediately upon falling and striking the concrete floor with his left knee on January 10, 2008. It took Mr. Gregory a while to gather himself and recover a bit, however, when he did, Claimant reported his injury to Everett Benson in Human Resources. Although Claimant was not initially sent for medical treatment, he did go to Freeman Occumed the following day. Claimant saw Dr. Estep on January 11, 2008. Mr. Gregory described to Dr. Estep what had happened and explained that he was in severe pain and was having trouble walking due to his left knee. Dr. Estep did prescribe medication, but did not take an x-ray or order an MRI. Dr. Estep's notes from the January 11, 2008 visit reflect a history from Claimant that he was doing well following the December 2007 incident, until he fell on January 10, 2008, a statement that Claimant testified was accurate. However, Dr. Estep's note also goes on to say that Claimant had been progressing slowly and that he had been told he was progressing slower than normal following the December surgery. Claimant testified that this statement from Dr. Estep was inaccurate.

Claimant followed up with Freeman Occumed on January 18, 2008, but on that visit saw Dr. Burleigh. X-rays were taken, but not an MRI. Dr. Burleigh indicated to Claimant that he did not believe the fall was causing his problems and told Mr. Gregory to follow-up with Dr. Grantham.

Dr. Grantham released Claimant to resume his duties as tolerated on January 24, 2008. At that time, Claimant was waiting to hear something from his Employer regarding treatment for his January 10, 2008 fall. While Mr. Gregory was waiting to hear from the Employer, he sought treatment with Dr. Carson. Claimant gave Dr. Carson a history of the December 2007 surgery and the January 2008 re-injury at work. Claimant also explained to Dr. Carson how he was

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having trouble in his knee with any activity. When Dr. Carson did nothing for him, Claimant returned to Dr. Grantham.

Claimant saw Dr. Grantham in March 2008. Dr. Grantham's notes reflect his suspicion that Claimant may have re-torn his meniscus in the January 2008 fall. Dr. Grantham did not recommend an MRI but did recommend another surgery. Claimant asked the Employer/Insurer to pick up the medical treatment regarding his left knee. However, Claimant was told the Employer was waiting on a final decision to be made.

Claimant saw Dr. Grantham on April 17, 2008 at which time Dr. Grantham continued to recommend another surgery. After seeing Dr. Grantham on April 17, 2008, Employer/Insurer denied the claim and would not authorize any medical treatment. Claimant therefore, scheduled and proceeded with surgery by Dr. Grantham on April 21, 2008.

Unfortunately, after a brief improvement, Claimant's left knee became progressively worse over the coming weeks and months. Mr. Gregory's symptoms, including his pain, continued and worsened. Even daily living activities continued to cause him problems. Dr. Grantham and the physical therapist have encouraged Claimant to be active during the course of his treatment. Claimant tried to remain active. Mr. Gregory even tried playing golf, however found he could not even finish one round due to left knee pain.

Dr. Grantham actually released Claimant on July 1, 2008 and his notes reflect Claimant was without complaints. However, Claimant testified how he was far from complaint free at that time. Mr. Gregory's pain and limitations continued. In fact, a Functional Status Summary from the physical therapist dated June 30, 2008 indicated Claimant was still having problems with prolonged standing, sitting, stair climbing and lifting due to his left knee complaints.

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When Claimant just did not seem to be getting any better, he returned to Dr. Grantham in late August of 2008. Claimant testified how he did not feel he was getting better, but instead felt he was getting worse. Even though Mr. Gregory had retired, everything he did hurt. Even attempting to play golf was difficult. At that time, Claimant began synvisc injections and massage therapy however, only continued to get worse even after being release by Dr. Grantham in September of 2008. Finally, Claimant sought treatment with Dr. Black in February of 2009. At that time, he was having severe pain in the left knee. Mr. Gregory could not sleep and could barely walk. Mr. Black ordered an MRI of the left knee. The MRI indicated a large osteochondral defect in Claimant's medial femoral condyle. Dr. Black performed a total knee arthroplasty on March 23, 2009. Dr. Black opined that Claimant's condition and need for surgery were caused by his January 10, 2008 injury. Dr. Black's note of April 6, 2009 states:

I do feel that the reason he developed the need for the total knee replacement was his injury, which occurred at work. It remarkably aggravated his pain. This will be consistent with his avascular changes seen on x-ray.

In Dr. Black's office note of April 20, 2009, he again stated his opinion regarding the cause of Claimant's left knee problems that he treated. The note states:

I feel patient's pain and development of cystic area has necessitated his total knee arthroplasty to be related to his fall, which occurred in January 2008. This is when the severe pain in the medial side of the knee began and gradually progressed. This was not originally visualized and had scope at that time, which is not uncommon for an avascular problem.

Dr. Black followed Claimant until releasing him on July 6, 2009.

On the day of hearing, Claimant testified regarding his continued problems and limitations from his left knee. Mr. Gregory has occasional aching in the left knee. He has ongoing weakness and decreased range of motion. Claimant continues to suffer with swelling and pain that increases with standing or walking. As a result of those problems, Claimant

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continues to have limitations on what he can do. He has difficulty navigating stairs. He cannot stand too long. He has difficulty with prolonged driving especially when his knee must be bent. He cannot kneel or squat to read a putt, or to clean his tub.

Claimant continues to follow up annually with Dr. Black. Mr. Gregory continues to take over-the-counter medication for his left knee. He takes pain relievers a few times a week and Glucosamine daily.

Dr. Truett Swaim, an orthopedic surgeon in Kansas City, Missouri, evaluated Claimant at the request of his attorneys on January 18, 2010. Dr. Swaim testified by way of deposition on July 14, 2010. Claimant's diagnosis was one of status post left knee total replacement with persistent aching, weakness, swelling, and mild range of motion deficit. Dr. Swaim opined that it was Claimant's January 2008 work injury that was the prevailing factor to cause him to develop a recurrent left knee meniscus tear, the medial femoral condyle osteochondral defect, and the additional cartilage damage to the knee. Dr. Swaim went on to state that the prevailing factor necessitating the evaluation and treatment for Claimant's knee was his January 2008 work injury. Dr. Swaim assessed a permanent partial disability of 35% at the 160-week level of the left knee caused by the January 2008 accident. Dr. Swaim recommended continued annual follow up appointments with Dr. Black to monitor Claimant's knee condition.

Dr. Swaim gave a detailed explanation as to how he arrived at his opinion that Claimant's January 2008 fall at work was the prevailing factor in his current knee condition and in the need for treatment. Dr. Swaim explained that the x-rays taken on December 11, 2007 did not reveal any osteochondral defect in the medial femoral condyle. Claimant then sustained the January 2008 fall that caused a significant exacerbation in his knee pain. Although, Dr. Grantham failed to visualize an osteochondral defect in his April 2008 surgery, Dr. Swaim explained that even

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under a scope you are sometimes unable to identify an osteochondral defect. He stated that you sometimes just cannot see the defect with the scope. Dr. Swaim indicated that the most accurate way to assess an osteochondral defect is with an MRI scan. However, Dr. Grantham did not order an MRI. In fact, no MRI was ever performed until January 2009. At the time of the MRI, a significant osteochondral defect of the medial femoral condyle was indicated. The x-rays taken a short time later also revealed changes consistent with an osteochondral defect. Dr. Black identified cystic areas in Claimant's knee. Dr. Swaim explained that this reference to cystic areas is a reference to the osteochondral defect, a fracture through a part of the cartilage and bone underlying it. When such a fracture through the cartilage and bone exists it creates a lack of blood supply to the bone and results in the avascular necrosis. It was this significant osteochondral defect that in Dr. Swaim's opinion was the prevailing factor to necessitate the need for Claimant's knee replacement. He went on to explain that in his opinion osteochondral defects are not the result of degenerative changes but are primarily the result of direct trauma to the area or problems with blood supply to the area.

Dr. Edwin Roeder examined Claimant at the request of the Employer/Insurer on January 12, 2010. Dr. Roeder found that "causation is a more difficult issue". He believed Claimant's fall of January 2010 could have triggered his symptom but was not the cause of the degenerative changes. Dr. Roeder was not definitive as to a diagnosis. Dr. Roeder stated that if avascular necrosis is considered as a diagnosis, the patient was symptomatic before the fall and it is "quite possible" that this was pre-existing. If he considered an osteochondral fracture as a diagnosis, he indicated that one would suspect that Dr. Grantham would have noted this on his April 2008 arthroscopy. Therefore, Dr. Roeder did not think an acute osteochondral injury was an option

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either. Dr. Roeder ultimately concluded that he believed pre-existing changes were the prevailing factor in the need for knee replacement in this case.

### **Conclusions of Law**

It is clear that there is a difference of opinion as to the causation of Claimant's current complaints and the necessity for the treatment he received on his left knee following his January 2008 fall at work. The major issue presented by the parties is whether Claimant's knee condition was caused by his alleged accident. Indeed, there is no evidence to dispute that an incident occurred on January 10, 2010 as Claimant described. Claimant alleges that incident caused his current complaints and necessitated the treatment he underwent, including the knee replacement performed by Dr. Black. Thus, the issue of accident rises or falls with the determination of causation. Indeed, §287.020 RSMo, in effect at the time of this injury, states that: "an injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. The prevailing factor is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability." §287.020.3(1) RSMo. Moreover, "In determining compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate test or diagnostic procedure." §287.190.6(2) RSMo.

It is clear from the evidence presented in this case that Claimant had prior problems with his left knee. However, prior to November of 2007, the problems were not continuous nor were they limiting Claimant's activities. Claimant had undergone a couple of injections that had resulted in complete resolution of his symptoms. According to the medical evidence, the fall Claimant had in November of 2007 resulted in a medial meniscus tear that was repaired by Dr.

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Grantham. At the time of the repair neither x-rays nor the arthroscopy gave any indication of an osteochondral defect or avascular necrosis issue in Claimant's left knee. According to Claimant's testimony and the medical records, he was doing well following this surgery. Mr. Gregory had only missed two days from work and was not taking any medication. His pain had resolved. Although Claimant did have some ongoing stiffness, it was improving daily.

According to Claimant's testimony, on January 10, 2008, his leg became caught up in the welding wire causing him to twist his left knee and fall. He landed on the floor striking his knee on the concrete. Claimant testified that this fall resulted in immediate severe pain where no pain had previously existed. Even with the treatment overseen by Dr. Grantham, Claimant's pain and limitations continued to progress until he was finally seen by Dr. Black who ordered the MRI and performed the necessary left knee replacement. Having had a chance to observe Claimant testify and to review the medical records presented, I find Claimant to be a credible witness.

In deciding the issue of causation, each doctor's opinion was reviewed and analyzed considering the evidence as a whole. Although Dr. Burleigh checked a box indicating his opinion that the fall at work was not the prevailing factor, he did not provide any explanation for his opinion or any analysis regarding how he came to that conclusion. Dr. Burleigh merely saw the Claimant on one occasion and rendered his conclusion without a full review of the medical evidence. Dr. Burleigh did not have the advantage of reviewing the subsequent MRI or Dr. Black's findings. Therefore, I am not giving much weight to his testimony.

Dr. Roeder did have the opportunity to review the majority of the medical records and findings. However, his arguments were not persuasive. Dr. Roeder stated plainly that he felt causation was a difficult issue. Dr. Roeder indicated the speculative nature of his opinions when discussing a possible diagnosis of avascular necrosis. According to Dr. Roeder it was "quite

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possible” that if this condition was present it was pre-existing. Dr. Roeder went on to state that “if” he considered an osteochondral fracture as a possible diagnosis, one would “suspect” that Dr. Grantham would have noted it on his April 2008 arthroscopy. Again, indicating a speculative opinion. Although, Dr. Roeder ultimately concluded that he believed pre-existing changes were the prevailing factor in the need for knee replacement, I do not find his opinion persuasive.

Dr. Swaim, however, analyzed the entirety of the medical and gave explanation not only in his report but also in his subsequent testimony supporting his findings and conclusions. It was Dr. Swaim’s opinion that Claimant’s January 2008 fall at work was the prevailing factor to cause him to develop a recurrent left knee meniscus tear, the medial femoral condyle osteochondral effect, and the additional cartilage damage to the knee. He went on to state that the prevailing factor necessitating the evaluation and treatment for claimant’s knee was his January 10, 2008 work injury and the significant osteochondral defect that resulted from that fall.

Dr. Swaim went into great detail explaining how he arrived at his opinions. Dr. Swaim utilized objective medical evidence to justify his conclusions. Dr. Swaim explained that the x-rays taken on December 11, 2007 did not reveal any osteochondral defect in the medial femoral condyle. Then, Claimant sustained the January 2008 fall at work. According to Claimant’s testimony, this fall resulted in immediate and severe pain in his left knee. Although Dr. Grantham failed to visualize an osteochondral defect in his April 2008 surgery, Dr. Swaim explained that even under a scope you are sometimes unable to identify an osteochondral defect. He stated that you sometimes just cannot see the defect with the scope. Dr. Swaim indicated that the most accurate way to assess an osteochondral defect is with an MRI scan. However, Dr. Grantham did not order an MRI. In fact, no MRI was ever performed until January 2009. At the

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time of the MRI, a significant osteochondral defect of the medial femoral condyle was indicated. The x-rays taken a short time later also revealed changes consistent with an osteochondral defect. Dr. Black identified cystic areas in Claimant's knee. Dr. Swaim explained that this reference to cystic areas is a reference to the osteochondral defect, a fracture through a part of the cartilage and bone underlying it. When such a fracture through the cartilage and bone exists, it creates a lack of blood supply to the bone and results in the avascular necrosis. It was this significant osteochondral defect that in Dr. Swaim's opinion was the prevailing factor to necessitate the need for Claimant's knee replacement. Dr. Swaim further opined that osteochondral defects are not the result of degenerative changes but are primarily the result of direct trauma to the area or problems with blood supply to the area. I find Dr. Swaim's testimony to be persuasive.

Finally, I find the opinion of Dr. Black to be persuasive as well. Dr. Black was the treating physician who had the opportunity to not only review the records and diagnostic films, but also was able to actually visualize the Claimant's left knee during his knee replacement surgery in March of 2009. Dr. Black opined that Claimant's condition and need for surgery were caused by his January 10, 2008 injury. Dr. Black's note of April 6, 2009 states:

I do feel that the reason he developed the need for the total knee replacement was his injury, which occurred at work. It remarkably aggravated his pain. This will be consistent with his avascular changes seen on x-ray.

In Dr. Black's office note of April 20, 2009, he opines regarding the cause of Claimant's left knee problems that he treated. The note states:

I feel patient's pain and development of cystic area has necessitated his total knee arthroplasty to be related to his fall, which occurred in January 2008. This is when the severe pain in the medial side of the knee began and gradually progressed. This was not originally visualized and had scope at that time, which is not uncommon for an avascular problem.

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### **Extent of Disability from the Last Accident**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented, and the applicable law of the State of Missouri, I find and conclude that Claimant sustained a compensable injury to his left knee on January 10, 2008 when he fell while working for Employer. I conclude that Claimant's January 2008 fall at work was the prevailing factor to cause him to develop a recurrent left knee meniscus tear, the medial femoral condyle osteochondral defect, and the additional cartilage damage to the knee. I find and conclude that the January 10, 2008 accident at work was the prevailing factor necessitating the evaluation and treatment for Claimant's knee including but not limited to the knee replacement surgery performed by Dr. Black. I find Claimant to have been temporarily and totally disabled from March 23, 2009 to July 6, 2009 as a result of his January 10, 2008 work injury. Finally, I find that Claimant is in need on ongoing and continued medical treatment now and in the future to cure and relieve the effects of his January 10, 2008 injury.

Having found and concluded the above, I order the Employer/Insurer to pay the Claimant the following:

1. Temporary Total Disability benefits from March 23, 2009 to July 6, 2009 in the amount of \$9,330.72;
2. 20% Permanent Partial Disability to the level of the left knee or \$12,449.28, and
3. Past medical in the amount of \$17,947.62

### **Future Medical Treatment**

I am also ordering medical be left open in this file to cure and relieve the effects of Claimant's January 10, 2008 work injury.

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### **Pre-Existing Disability**

In addition to Mr. Gregory's left knee problems, Claimant testified at hearing concerning his pre-existing right knee, right shoulder and right hand problems. In 2001, Claimant sustained an injury to his right knee that required surgery. He continued to suffer due to some ongoing pain as well as occasional swelling in his right knee.

In 2000, Claimant suffered an injury to his right shoulder that resulted in an open right shoulder surgery. Mr. Gregory was left with ongoing pain and weakness in the shoulder. Claimant also has significant range of motion deficits in his right shoulder. He is limited in his ability to lift or carry due to shoulder pain. Additionally, Claimant is completely unable to perform work overhead.

Claimant injured his right hand in 2004 resulting in a significant contracture of his right ring finger. This contracture limits his ability to extend his right ring finger that limits his ability to pick up items with his right hand.

Although Dr. Swaim provided permanent partial disability ratings for each of these pre-existing conditions,

I find the following disability to be appropriate for the pre-existing disabilities based upon all of the evidence: 15% pre-existing permanent partial disability at the level of the left knee, a 15% pre-existing permanent partial disability at the level of the right knee, an 27% pre-existing permanent partial disability at the level of the right shoulder, to include the hand and right wrist.

I find that Claimant's disability from his January 10, 2008 work injury combines with his pre-existing disabilities to create a disability greater than their simple sum. I find the effect of

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that combination to result in an enhancement factor of 10% and I order the Second Injury Fund to pay \$5,549.27 to Claimant as a result of the combination.

I further order attorney's fees for attorney Matthew B. Webster in the amount of 25% of all benefits awarded herein which shall constitute a lien upon this award.

Date: 11/28/11

Made by: /s/ Karen Fisher

Karen Fisher

*Administrative Law Judge*

*Division of Workers' Compensation*