

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

Injury No.: 06-047699

Employee: Lisa Higgenbotham
Employer: DPM of Missouri a/k/a McDonald's Restaurant
Insurer: Self-Insured (Cannon Cochran Management Services)
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 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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 29, 2009. The award and decision of Administrative Law Judge Hannelore D. Fischer, issued September 29, 2009, 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 30th day of June 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Lisa Higgenbotham Injury No. 06-047699

Dependents: N/A

Employer: DPM of Missouri; aka, McDonald's Restaurant

Additional Party: Treasurer of the State of Missouri,
Custodian of the Second Injury Fund

Insurer: Self-Insured (Cannon Cochran Management
Services)

Hearing Date: August 19, 2009

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

Checked by: HDF/tmt

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: June 5, 2006.
5. State location where accident occurred or occupational disease was contracted: Montgomery County.
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:
See award.
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: 30% left knee.
15. Compensation paid to-date for temporary disability: \$8,027.66.
16. Value necessary medical aid paid to date by employer/insurer? \$17,971.64.
17. Value necessary medical aid not furnished by employer/insurer? None.

Employee: Lisa Higgenbotham

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18. Employee's average weekly wages: \$316.44.
19. Weekly compensation rate: \$210.96.
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable: 30% left knee = 48 weeks, $\$210.96 = \$10,126.08$.
22. Second Injury Fund liability: 20% body = \$16,876.80.

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: Charles Bobinette

Employee: Lisa Higgenbotham

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FINDINGS OF FACT and RULINGS OF LAW:

Employee: Lisa Higgenbotham

Injury No: 06-047699

Dependents: N/A

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: DPM of Missouri; aka, McDonald's Restaurant

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

Additional Party: Treasurer of the State of Missouri,
Custodian of the Second Injury Fund

Insurer: Self-Insured (Cannon Cochran Management Services)

Checked by: HDF/tmt

ISSUES DECIDED

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on August 9, 2009. Memoranda were due on September 16, 2009.

The parties stipulated that on or about the 6th day of June, 2006, the claimant, Lisa Higgenbotham, was in the employment of DPM of Missouri, aka McDonald's Restaurant (McDonalds); Ms. Higgenbotham sustained an injury by accident; the accident arose out of and in the course of employment.

The employer was operating under the provisions of Missouri's workers' compensation law; workers' compensation liability was self insured and administered by Cannon Cochran Management Services as third party administrator. The employer had notice of the injury; a claim for compensation was timely filed.

The applicable rate of compensation is \$210.96 per week for all benefits. Temporary disability benefits have been paid to the claimant to date in the amount of \$8027.66, representing 42 and 3/7 weeks, paid from June 16, 2006, through April 8, 2007. Medical aid has been provided in the amount of \$17,971.64.

The issues to be resolved by hearing include 1) the liability of the employer/insurer for past medical treatment, 2) the liability of the employer/insurer for future medical treatment, 3) the nature and extent of permanent disability, 4) the liability of the Second Injury Fund, and 5) the right of survivorship of a dependent child.

The employer /insurer stipulated to liability for mileage reimbursement for travel of 365.5 miles.

FACTS

The claimant, Lisa Higgenbotham, 47 years old as of the date of hearing, injured her left knee on June 5, 2006, when, while working at McDonald's, she was struck by a cooler door, causing her to fall on the knee. Ms. Higgenbotham received medical attention, including surgery on the knee

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on January 30, 2007, by Dr. Tarbox. Ms. Higgenbotham had several unsuccessful returns to light duty work while recuperating.

After Dr. Tarbox recommended that Ms. Higgenbotham find a job that required less standing, Ms. Higgenbotham quit her job at McDonald's during the summer of 2007. Ms. Higgenbotham then worked as a prep cook at Maggies, a restaurant; Ms. Higgenbotham left Maggies in February of 2008, because her knee was still troubling her. Ms. Higgenbotham started using a cane to support herself in April of 2008, after she left Maggies and applied for social security benefits. Ms. Higgenbotham did not go to see the pain management specialist, Dr. Manish Suthar, suggested by Dr. Tarbox and authorized by the employer/insurer in late 2008, choosing instead to see her family physician, Dr. Eric Kondro. Ms. Higgenbotham did not avail herself of the authorized pain management because of Dr. Suthar's location in St. Louis, stating it was "too far."

Ms. Higgenbotham described herself as active prior to the left knee injury in 2006, but stated that her inability to work stems from her prior right hand injury combined with the left knee injury. Ms. Higgenbotham now walks with a cane to stabilize herself and has to alternate the hand with which she handles the cane. Ms. Higgenbotham elevates her left leg on a pillow during the day, has knee pain, and is tired, which causes her to need to lie down during the day.

Ms. Higgenbotham graduated from high school in 1978. Thereafter, she went to the University of Missouri in Columbia, Missouri, enabling her to receive her LPN license in 1979 and then her RN license in 1984. Ms. Higgenbotham had a daughter in 1978 and a son in 1980. Ms. Higgenbotham's son was born with a cleft palate, along with other congenital deformities, which required 27 plastic surgeries. During this time, Ms. Higgenbotham was taking care of her children, including care for her son during his multiple operative procedures, and working full time. Ms. Higgenbotham was married and divorced prior to receiving the education necessary for her RN licensure.

Ms. Higgenbotham testified to feeling tired and generally fatigued while caring for her son. She said that it was determined that she had the "trait" for sickle cell anemia and that vitamins and "catnaps" were recommended to her.

Ms. Higgenbotham remarried in 1985. In 1988, she let her nursing license lapse and worked as a bartender and in the fast food industry. In 1994, Ms. Higgenbotham had another son, Travis. Ms. Higgenbotham divorced in 1997.

In 2000, while working at GW Fiberglass, Ms. Higgenbotham sustained an injury to her right arm when part of a camper shell was dropped on the arm. Ms. Higgenbotham settled the ensuing workers' compensation claim based on a permanent partial disability of 17.5 percent of the right hand at the wrist. Ms. Higgenbotham stated that she did not return to two-handed factory work following that surgery on the right wrist in March of 2002. Ms. Higgenbotham described pain and discomfort at the wrist going up into and beyond the right elbow.

Travis has been living with Ms. Higgenbotham since early 2009; prior to 2009, Ms. Higgenbotham did not have custody of her son.

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Dr. Eric Kondro, specializing in internal medicine and family practice, testified by deposition that Ms. Higgenbotham was a patient of his as of November of 2004. On February 6, 2008, Ms. Higgenbotham initially reported her continuing problems with her left knee to Dr. Kondro. Dr. Kondro “assessed her as having fibromyalgia, insomnia, and myofacial (sic) pain syndrome... specifically in the region of the left leg.” In February of 2008, Dr. Kondro referred Ms. Higgenbotham to Dr. Kathleen Weaver to get a second opinion. Dr. Kondro diagnosed reflex sympathetic dystrophy in April of 2008 due to Ms. Higgenbotham’s left knee status as “hyperactive response to touch and just exquisite tenderness.” Dr. Kondro opined that Ms. Higgenbotham should be seen by a pain management specialist for her left lower extremity complaints. Dr. Kondro felt that given Ms. Higgenbotham’s “lack of ability to use that limb,... her complicating factors of just being in pain and all the impairment that that brings mentally..and ...depression from a non-stop pain” that Ms. Higgenbotham would be unemployable. Dr. Kondro assumed that Ms. Higgenbotham’s fatigue occurred after her left knee injury.

Dr. Kondro also testified, however, that it was the combination of right wrist and left knee injuries which caused Ms. Higgenbotham to be unemployable.

Dr. Kondro’s charges for his treatment of Ms. Higgenbotham’s left knee after the June 5, 2006, left knee injury are as follows:

February 6, 2008	\$ 30.00
April 7, 2008	30.00
June 2, 2008	30.00
September 10, 2008	54.00
January 13, 2009	<u>54.00</u>
	\$ 198.00

Dr. Kondro did not have Ms. Higgenbotham’s prescriptions filled in his office, so those charges were separate. Dr. Kondro prescribed the following medications for Ms. Higgenbotham from February 6, 2008, forward, when he began treating her for her left knee pain:

February 6, 2008	Vicodin, Trazadone
April 7, 2008	Trazadone, Percocet
June 2, 2008	Trazadone, Gabapentin, Vicodin
September 10, 2009	Trazadone, Gabapentin, Vicodin and Piroxicam

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Dr. Kondro testified that the medications which he prescribed for Ms. Higgenbotham were for pain and insomnia and potentially neurological issues related to RSD. The Trazadone was for sleep and mood elevation and the Vicodin for pain control. Dr. Kondro described the Percocet as “quite a step up” from the Vicodin. Gabapentin is according to Dr. Kondro, a medication for nerve pain; Piroxicam is described by Dr. Kondro as a treatment for headaches.

Dr. David Volarich, D.O., testified by deposition that he evaluated Ms. Higgenbotham and prepared a May 7, 2008, report as well as an addendum dated September 12, 2008, as the result of the evaluation.

Dr. Volarich opined to a permanent partial disability of 50 percent of the left knee as the result of the June 5, 2006, fall. With regard to the right wrist injury, Dr. Volarich opined to “35 percent permanent partial disability of the right upper extremity rated at the forearm due to the intersection syndrome and superficial radial sensory nerve entrapment that required surgical repair and decompression.” Dr. Volarich generally described the restrictions he would impose on Ms. Higgenbotham as “with the lower extremities, I thought 15 or 20 minutes weight bearing before she needed to either lean against something or sit down for a little bit or take a break of some sort. I just thought that was appropriate because of the surface damage to the bone. I also recommended she avoid stooping, squatting, crawling, all the things that would aggravate that surface lesion. In the upper extremities, I didn’t know that she could handle any more than maybe five pounds with the arm away, 15 pounds with the arm closer to her body because of her weak grip, and we’ve already documented how it was half of what the non dominant side was. So I thought these were important to place her possibly in another type of job where she could function safely.” Dr. Volarich did not believe that Ms. Higgenbotham could return to nursing because of her “compromised” right hand and the danger of re-injury to the left knee by bumping into something.

Dr. Volarich found ongoing treatment of Ms. Higgenbotham’s left knee necessary and the medications which Dr. Kondro was prescribing for management of the left knee, Tramadol, Nortriptyline, Percocet, and Gabapentin reasonable and appropriate.

With regard to future knee surgery, Dr. Volarich mentioned the possibility of a partial or total knee replacement because the damaged cartilage could progress; however, no additional surgery was recommended as of the May 7, 2008, evaluation.

During cross-examination, Dr. Volarich emphasized that it was the synergistic effect of the combination of the 2006 left knee injury and the 2000 right hand injury that caused Ms. Higgenbotham to have increased disability.

Mr. Timothy Lalk, vocational rehabilitation counselor, testified by deposition that he evaluated Ms. Higgenbotham on July 29, 2008. Mr. Lalk opined that Ms. Higgenbotham’s primary impediments to a successful return to the workplace are the condition of her left knee and her “overall fibromyalgia which is, to her, flu-like symptoms with aching and soreness all over her body, and her doctor diagnosed her with fibromyalgia” in late 2007 or early 2008.

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Dr. Brenda Woods, D.O., testified by deposition that she completed “a residency in physical medicine and rehabilitation, and specialized in that area.” Dr. Woods evaluated Ms. Higgenbotham on April 17, 2008. At the time of Dr. Woods’ evaluation, Ms. Higgenbotham complained of pain in her left knee, lower back, the areas of both shoulders, both pectoral regions, both wrists, and both forearms.

Dr. Woods diagnosed “pain in the joint involving the lower leg, which is the knee. I thought she had myalgia or myositis, which is the ICD-9 code for fibromyalgia. I thought that she had other pain and disorders that were psychological factors, which refers to her depression and insomnia and other problems I thought she was suffering.” Dr. Woods did not feel that Ms. Higgenbotham had reflex sympathetic dystrophy, but did believe that her symptoms were more consistent with a diagnosis of fibromyalgia. Dr. Woods opined that Ms. Higgenbotham’s fibromyalgia preceded her 2006 work injury and that it was not caused by the work injury.

Dr. Woods opined to a permanent partial disability of 15 percent of the left knee as the result of the June 5, 2006, accident and injury Ms. Higgenbotham sustained at McDonald’s and further opined that Ms. Higgenbotham needed no additional medication as the result of that injury to her left knee.

Dr. Woods stated that Ms. Higgenbotham’s medications at the time that Dr. Woods saw her were Trazadone, an anti-depressant used as a sleep medication; Percocet, a narcotic pain control medication; and Gabapentin, an anti-seizure medication used for treatment of fibromyalgia and diffuse pain. Dr. Woods opined that these medications were not prescribed for treatment of the injury to the left knee.

During cross-examination, Dr. Woods commented on Ms. Higgenbotham’s lack of improvement in symptoms after her treatment, including surgery for her 2000 injury to her right hand as evidence of her pre-existing fibromyalgia. Dr. Woods went on to say that the fibromyalgia negatively affected Ms. Higgenbotham’s recovery from her left knee injury, especially as it pertained to the pain Ms. Higgenbotham experienced. Dr. Woods stated that Ms. Higgenbotham’s “greatest exacerbation of her fibromyalgia actually seemed to have occurred even a couple years after her accident, where she reported the whole body type of pain, where she couldn’t get herself out of bed and those types of things.” Dr. Woods did not say that either the right wrist injury of 2000 or the left knee injury of 2006 exacerbated Ms. Higgenbotham’s fibromyalgia, nor did she link the 2006 left knee injury to Ms. Higgenbotham’s diagnoses of depression and anxiety. Dr. Woods was certain that Ms. Higgenbotham already had fibromyalgia in 2000 when she had her right wrist injury and believed the fibromyalgia dated back many years during the time when Ms. Higgenbotham complained of severe fatigue. Dr. Woods opined that it was the fibromyalgia that was limiting Ms. Higgenbotham from working “because she does have more bad days than she has good and she cannot some days even get herself out of bed.”

Gary Weimholt, vocational rehabilitation consultant, testified with regard to his evaluation of Ms. Higgenbotham. Mr. Weimholt did not see Ms. Higgenbotham in person. Mr. Weimholt opined that Ms. Higgenbotham “at that level of background would have qualifications for sedentary kinds of occupations” given Ms. Higgenbotham’s “education, ... post high school education, college level nursing, she had five years of good, solid nursing experience, and skilled

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in that area, she had some level of computer literacy, and so my opinion is that a person at that level of background would have qualifications for sedentary kinds of occupations.”

Mr. Weimholt stated that any finding of permanent and total disability would be premised not on “the last injury alone to her knee, [but rather]... due to overall presentation of her complaints, including the preexisting fibromyalgia in her right wrist.”

Columbia Orthopedic Group records reflect Dr. Matt Thornburg’s initial evaluation of Ms. Higgenbotham’s left knee on June 27, 2006, at which time the “assessment” was “left knee pain, status post fall, patellar contusion, chondromalacia of the patella and probable incidental osteochondral lesion in the non-weightbearing surface.” At the initial visit, Dr. Thornburg recommended physical therapy and anti-inflammatory medications. Dr. Thornburg’s records of his visits with Ms. Higgenbotham reflect Ms. Higgenbotham’s lack of improvement with conservative care.

On September 13, 2006, Ms. Higgenbotham initially met with Dr. Tarbox. Dr. Tarbox’s “impression” is noted as “I feel she now has had an injury to her knee and has arthrofibrosis within her knee. We just need to really work on the physical aspect of her knee. I would start her on Neurontin to try to help break up some of this frozen aspect. I will return her back to work with the restriction of no prolonged standing and no repetitive bending, twisting or stooping.” Dr. Tarbox continued to treat Ms. Higgenbotham with minimal success in relieving her pain; the December 6, 2006 record reflects Dr. Tarbox’ “impression” of “left knee injury, now with full thickness medial femoral condylar injury at work.” At this December 6, 2006, appointment, Dr. Tarbox’ “plan” was to “set [Ms. Higgenbotham] up for left knee arthroscopy with chondroplasty of the medial femoral condylar lesion and will plan to do an OBI chondral implant.” Dr. Tarbox operated on Ms. Higgenbotham’s left knee on January 30, 2007; the operative note describes the procedure as “1. Left knee arthroscopy with abrasion chondroplasty of the patella. 2. Osteochondral transplant with OBI Trukor implant.” When Dr. Tarbox saw Ms. Higgenbotham in follow-up treatment several times in 2007, he concluded that some of Ms. Higgenbotham’s issues were “really a pain syndrome.” On June 6, 2007, Dr. Tarbox released Ms. Higgenbotham to full duty work, but recommended that she find work which would not require her to stand. On August 6, 2007, Dr. Tarbox released Ms. Higgenbotham from treatment with a permanent partial disability of 15 percent of the left knee.

Dr. Tarbox last saw Ms. Higgenbotham on March 31, 2008, at which time he recommended that Ms. Higgenbotham see a pain specialist. Dr. Tarbox noted that Dr. Weaver had injected Ms. Higgenbotham’s left knee with lidocaine without “any relief of symptoms at all.”

Columbia Orthopedic Group records also include the notes of a February 29, 2008, evaluation by Dr. Kathleen Weaver of Audrain Orthopedics, P.C. Dr. Weaver’s notes include a reference to “a known diagnosis of fibromyalgia.” Dr. Weaver’s “impression” is that of “referred pain versus reflex sympathetic dystrophy.” Dr. Weaver performed a lidocaine injection into the knee.

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Medications prescribed by Dr. Thornburg and Dr. Tarbox during their treatment of Ms. Higginbotham are as follows:

June 27, 2006	Dr. Thornburg	Naprosyn, Ultram
September 13, 2006	Dr. Tarbox	Neurontin
October 2, 2006	Dr. Tarbox	Neurontin
February 7, 2007	Dr. Tarbox	Vicodin

APPLICABLE LAW

RSMo, Section 287.190. 1. For permanent partial disability, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with sections 287.170 and 287.180, respectively, the employer shall pay to the employee compensation computed at the weekly rate of compensation in effect under subsection 5 of this section on the date of the injury for which compensation is being made, which compensation shall be allowed for loss by severance, total loss of use, or proportionate loss of use of one or more of the members mentioned in the schedule of losses. SCHEDULE OF LOSSES

Weeks

(18) Loss of one leg at or above the knee, where the stump remains sufficient to permit the use of artificial limb 160 ...

RSMo, Section 287.190. 3. For permanent injuries other than those specified in the schedule of losses, the compensation shall be paid for such periods as are proportionate to the relation which the other injury bears to the injuries above specified, but no period shall exceed four hundred weeks, at the rates fixed in subsection 1. The other injuries shall include permanent injuries causing a loss of earning power. For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe or phalange, as provided in the schedule of losses.

RSMo, Section 287.220. 1. All cases of permanent disability where there has been previous disability shall be compensated as herein provided. Compensation shall be computed on the basis of the average earnings at the time of the last injury. If any employee who has a preexisting permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the preexisting permanent partial disability, if a body as a whole injury, equals a minimum of fifty weeks of compensation or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation, receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree or percentage of disability, in an amount equal to a minimum of fifty weeks compensation, if a body as a whole injury or, if a major extremity injury only, equals a minimum of fifteen percent permanent partial

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disability, caused by the combined disabilities is substantially greater than that which would have resulted from the last injury, considered alone and of itself, and if the employee is entitled to receive compensation on the basis of the combined disabilities, the employer at the time of the last injury shall be liable only for the degree or percentage of disability which would have resulted from the last injury had there been no preexisting disability. After the compensation liability of the employer for the last injury, considered alone, has been determined by an administrative law judge or the commission, the degree or percentage of employee's disability that is attributable to all injuries or conditions existing at the time the last injury was sustained shall then be determined by that administrative law judge or by the commission and the degree or percentage of disability which existed prior to the last injury plus the disability resulting from the last injury, if any, considered alone, shall be deducted from the combined disability, and compensation for the balance, if any, shall be paid out of a special fund known as the second injury fund, hereinafter provided for. If the previous disability or disabilities, whether from compensable injury or otherwise, and the last injury together result in total and permanent disability, the minimum standards under this subsection for a body as a whole injury or a major extremity injury shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employer at the time of the last injury is liable is less than the compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under section 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in section 287.141. Maintenance of the second injury fund shall be as provided by section 287.710. The state treasurer shall be the custodian of the second injury fund which shall be deposited the same as are state funds and any interest accruing thereon shall be added thereto. The fund shall be subject to audit the same as state funds and accounts and shall be protected by the general bond given by the state treasurer. Upon the requisition of the director of the division of workers' compensation, warrants on the state treasurer for the payment of all amounts payable for compensation and benefits out of the second injury fund shall be issued.

AWARD

The claimant, Lisa Higgenbotham, has sustained her burden of proof that she has a permanent partial disability of 30 percent of the left knee as the result of the accident and injury of June 5, 2006. Ms. Higgenbotham testified credibly with regard to the use of her left leg and Drs. Volarich, Tarbox, and Woods all opined in a reliable fashion regarding Ms. Higgenbotham's disability to the left leg as the result of the knee injury.

Ms. Higgenbotham has sustained her burden of proof that she has a combined disability of 20 percent of the body as the result of the pre-existing right hand injury and the 2006 left knee injury. Ms. Higgenbotham testified credibly regarding the limitations imposed by her knee and hand injuries, as well as to deterioration of her general health around 2008. While Ms. Higgenbotham's right hand and left knee injuries combined to cause her a disability in excess of the simple sum of the disability attributable to the injuries added together, it is her deterioration

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after 2008 which has raised the specter of permanent total disability. Fibromyalgia was not plead as a pre-existing disability and there was no mention of fibromyalgia in any medical records prior to Dr. Kondro's general diagnosis of fibromyalgia in early 2008, along with his additional diagnoses of reflex sympathetic dystrophy and insomnia. Dr. Woods was the only physician to allude to fibromyalgia as a condition pre-existing 2006, and even Dr. Woods acknowledged that the fibromyalgia had its "greatest exacerbation" a few years after the accident when Ms. Higgenbotham complained of whole body pain and an inability to get out of bed.

Ms. Higgenbotham has failed to sustain her burden of proof that she is entitled to past medical treatment for her treatment with Dr. Kondro, a family physician. Dr. Woods and Dr. Kondro both opined to the need for Ms. Higgenbotham to see a pain management specialist, something Ms. Higgenbotham has apparently failed to do. Dr. Kondro treated Ms. Higgenbotham for a myriad of symptoms, including the left knee injury and has prescribed medications for a myriad of symptoms including, but not exclusively, for the left knee injury. Dr. Kondro's treatment is unauthorized and, therefore, not compensable, as are the prescription charges which remain largely unidentified.

Future medical treatment in the form of pain management is awarded to Ms. Higgenbotham. The need for pain management is discussed in the preceding paragraph.

All other issues raised for resolution are hereby rendered moot.

Date: _____

Made by: _____

HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson