

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

Injury No.: 08-112333

Employee: Kyle Hunter  
Employer: Sachs Electric  
Insurer: Travelers Indemnity Company of America  
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.<sup>1</sup> Having reviewed the evidence, read the briefs, heard oral argument, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) 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 ALJ dated January 23, 2012, as supplemented herein.

In denying employee's claim for permanent partial disability benefits, the ALJ concluded that while employee sustained acute synovitis from striking his knee at work on July 15, 2008, employee "did not materially change the structural soundness of his knee or cause any addition[al] chondral injury" to the knee. On appeal, employee argues that it is inconsistent to find that the injury caused synovitis, but yet did not cause an acute change to the structure of the knee. In support of his argument, employee meticulously analyzed the definitions of "synovitis," "membrane," and "inflammation" before concluding that it is impossible to have acute synovitis to the knee without an acute change to the structure of the knee.

The medical evidence supports a finding that as a result of the July 15, 2008, injury employee sustained acute synovitis, which caused acute inflammation and swelling to the knee. While employee focuses on proving that the July 15, 2008, injury caused an acute change to the structure of the knee, we find that the primary focus should be on proving that the July 15, 2008, accident was the prevailing factor in causing employee's permanent disability to the knee.

Dr. Milne opined that employee had 6% permanent partial disability of the left knee, but stated that this entirely preexisted his work injury.

The ALJ thoroughly reviewed the evidence and concluded that Dr. Milne's opinion that employee did not have any permanent disability associated with his work injury was

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

Employee: Kyle Hunter

more credible than Dr. Volarich's opinion that he did. We find that the ALJ's decision is fully supported by competent and substantial evidence.

**Award**

We affirm the award of the ALJ as supplemented herein.

The award and decision of Administrative Law Judge Karla Ogradnik Boresi, issued January 23, 2012, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

The Commission further approves and affirms the ALJ'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 21<sup>st</sup> day of November 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSIN

V A C A N T  
Chairman

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James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee:	Kyle Hunter	Injury No.: 08-112333
Dependents:	N/A	Before the
Employer:	Sachs Electric	<b>Division of Workers' Compensation</b>
Additional Party	Second Injury Fund	Department of Labor and Industrial Relations Of Missouri
Insurer:	Travelers Indemnity Co of America	Jefferson City, Missouri
Hearing Date:	October 20, 2011	Checked by: KOB

### 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: July 15, 2008
5. State location where accident occurred or occupational disease was contracted: Saint Louis 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:  
Claimant fell down stairs while carrying building materials.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: alleged left knee
14. Nature and extent of any permanent disability: 0%
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$2,306.20

- 17. Value necessary medical aid not furnished by employer/insurer? \$13,725.59
- 18. Employee's average weekly wages: \$1,338.49
- 19. Weekly compensation rate: \$772.53 / \$404.66
- 20. Method wages computation: By agreement.

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses:	\$13,725.59
5 1/7 weeks of temporary total disability	\$3,973.01
0 weeks of permanent partial disability from Employer	\$0.00

- 22. Second Injury Fund liability: No

TOTAL: \$17,698.60

- 23. Future requirements awarded:

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: Dean Christianson

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

Employee:	Kyle Hunter	Injury No.: 08-112333
Dependents:	N/A	Before the
Employer:	Sachs Electric	<b>Division of Workers' Compensation</b>
Additional Party	Second Injury Fund	Department of Labor and
		Industrial Relations
		Of Missouri
Insurer:	Travelers Indemnity Co of America	Jefferson City, Missouri
Hearing Date:	October 20, 2011	Checked by: KOB

**PRELIMINARIES**

The matter of Kyle Hunter (“Claimant”) proceeded to final hearing on October 20, 2011. Attorney Dean Christianson represented Claimant. Attorney Rick Day represented Sachs Electric (“Employer”), and its insurer. Assistant Attorney General Rachel Houser represented the Second Injury Fund.

The parties stipulated Claimant was an employee of Employer on the alleged date of accident of July 15, 2008. The parties stipulated the St. Louis Division of Workers’ Compensation is the proper venue, and notice, timeliness of the claim, and coverage of the Act were not at issue. At the relevant time, Claimant earned an average weekly wage of \$1,338.49, with corresponding rates of compensation of \$772.53 for temporary total disability (“TTD”) benefits and \$404.66 for permanent partial disability (“PPD”) benefits. Employer paid no TTD benefits, but did pay medical benefits of \$2,306.20.

The issues for determination are: 1) did Claimant sustain an accident<sup>1</sup> arising out of and in the course of employment; 2) is the accident the prevailing cause of Claimant’s medical condition and disability; 3) is Employer liable for past medical expenses of \$13,725.59; 4) is Employer obligated to provide future medical care; 5) is Employer liable for TTD benefits from September 14, 2009 to October 20, 2009; 6) what is Employer’s liability for PPD benefits; and 7) what is the liability of the Second Injury Fund?

**FINDINGS OF FACT**

*Claimant’s Testimony*

Claimant is a 45-year-old high school graduate who served eight years in the National Guard, and is a commercial electrician. In 1997, he tripped at work, fell, and hurt his left knee. He underwent a diagnostic arthroscopy that ruled out a meniscus tear, and confirmed grade III chondromalacia. Claimant settled his 1997 left knee claim for 22% of the left knee. He returned to work, avoided kneeling, and experienced pain after long periods of work.

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<sup>1</sup> Although Employer did not stipulate to accident at the hearing, in the proposed award submitted post-trial, Employer conceded Claimant met his burden of establishing an accident as defined in the Act.

In 2008, Claimant worked for Sachs Electric as a journeyman electrician on a St. Louis County building project. On July 15, 2008, while carrying pieces of conduit down a temporary metal stairwell with awkwardly spaced steps, Claimant missed one of the steps, tumbled forward, and struck the front of his left knee on a metal pipe. He immediately felt fiery left knee pain.

Employer authorized treatment with Barnes Care. Claimant went to Barnes Care several times and received x-rays, an MRI, ice and a wrap for his knee. Employer accommodated his light duty restrictions. Claimant testified he continued to have complaints.

Employer authorized Claimant to see Dr. Milne in November. Despite Dr. Milne's recommendation for further care in the form of a high quality MRI or diagnostic arthroscopy, Employer did not authorize any more treatment. Feeling he was "not getting anywhere" with Employer, Claimant sought treatment on his own with Dr. Sedgwick, who performed surgery after conservative treatment. Claimant was off work for 5 1/7<sup>th</sup> weeks on doctor's orders, and attended physical therapy at ProRehab. He is no longer treating, other than taking supplements, but incurred medical bills of \$13,725.59, as indicated in Exhibit H, for the treatment provided by Dr. Sedgwick. The statements submitted indicate that most or all of the charges have been written off, and the balances of the various accounts are near or at zero.

Claimant continues to have problems in his left knee. He describes a discomfort that increases with strenuous activity. He wears kneepads at work for protection, and to "hold things together." He elevates and ices his knee at night. Climbing ladders increases his discomfort and he sometimes asks co-workers for help. He is not able to run.

#### *Medical and other Records*

##### *Preexisting*

In 1998, Claimant sustained an accidental injury. The records of Dr. Kostman (Exhibit J) document a diagnostic arthroscopy on Claimant's left knee on June 22, 1998 to rule out a meniscus tear. The post-operative diagnosis was chondromalacia of the patella, specifically grade III chondromalacia involving the patellofemoral joint and the patellar surface. When he last saw Dr. Kostman, Claimant had full range of motion and no notable motor weakness, but still had some discomfort in his left knee when squatting or kneeling for an extended time. The workers' compensation settlement for this injury was equivalent to 22% of the left knee. Claimant had few complaints or limitations over the years.

##### *Primary*

The BarnesCare records (Exhibit G) document four authorized visits. On July 15, 2008, Claimant received x-rays, a knee brace, medication, and restrictions to keep leg elevated, limit climbing and avoid kneeling and squatting entirely. On July 22, 2008, BarnesCare physicians released Claimant to full duty with the diagnosis of a knee contusion. At an incident recheck on November 12, 2008, BarnesCare physicians recommended an MRI, which revealed no evidence of meniscal tear. It did show articular cartilage narrowing in the lateral patellar facet that is likely degenerative and small joint effusion, but no other abnormality (Exhibit D). BarnesCare physicians discharged Claimant on November 24, 2008 with instructions to see his family doctor.

The next physician Claimant saw was Dr. Sedgwick on March 24, 2009, on referral by his attorney<sup>2</sup> (Exhibit B). Upon examination, and considering his records and history, Dr. Sedgwick diagnosed Claimant with patellofemoral arthrosis with synovitis in the left knee. History of prior chondroplasty for grade III chondromalacia of the patella left knee – 1998. History of a recent patellar contusion with aggravation of patellofemoral arthrosis and subsequent synovitis left knee – 2008. He received a cortisone injection, which was initially helpful.

At the request of Employer/Insurer, Dr. Milne performed an independent medical examination of April 9, 2009 (Attachment 2 to Exhibit 1). Dr. Milne diagnosed left knee pain, left knee possible internal derangement including meniscal tear or chondral injury. Based on Claimant's history and complaints, he felt the work related injury is the prevailing factor in his current complaints. As to additional medical treatment, Dr. Milne felt there were two choices:

One would be to repeat the MRI with a high Quality MRI scan...(which)...could held delineate whether this is a meniscal tear, but it would not provide the patient with any pain relief. The second option is of a diagnostic arthroscopy with a probable partial medial meniscectomy and chondroplasty with removal of loose bodies.

Employer did not authorize either treatment option, despite Claimant's requests for surgery.

Claimant continued to see Dr. Sedgwick on his own, and to work regular duty. On May 12, 2009, Claimant complained of pain on ladders. Dr. Sedgwick recommended conservative measures. On July 27, 2009, Claimant returned with "recurrence and progression in his left knee pain." Citing the success of his prior procedure, Claimant wanted to undergo arthroscopy. Dr. Sedgwick had, "a lengthy discussion with him about the limitations of arthroscopy for treating chronic osteoarthritic changes in the knee. He understands ... that there is presently no satisfactory way of replacing articular cartilage and all that can be accomplished arthroscopically would be debridement of the articular cartilage."

Dr. Sedgwick made the following comments regarding the September 14, 2009 surgery:

Mr. Hunter underwent arthroscopic chondroplasty of the lateral facet of the left patella for degenerative chondromalacia grade III/IV. At surgery, he was noted to have intact menisci and cruciate ligaments. There was a mild reactive nonspecific synovitis. There was grade I chondromalacia of the medial femoral condyle and medial tibia. There was grade II of the posterior and lateral aspect of the lateral femoral condyle consisting of a small superficial cleavage of of (sic) the articular cartilage. The trochlea was intact. (See operative report [Exhibit C]).

In three post-surgical follow-up visits, Claimant reported doing well. Dr. Sedgwick released Claimant to return to work as of October 20, 2009. He felt Claimant's injury "represented and aggravation of his pre-existing problem as grade III chondromalacia of the patella was noted in his 1998 arthroscopic chondroplasty." Claimant incurred medical expenses of \$13,725.59 related to the reasonable and necessary treatment of his left knee (Exhibit H).

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<sup>2</sup> Claimant's attorney had requested treatment from Employer/Insurer on January 22, 2009 and March 5, 2009, with no response (Exhibit I).

*Expert Opinion Evidence*

Dr. Michael Milne, a board certified orthopedic surgeon who specializes in knee and shoulder injuries, evaluated Claimant at Employer's request on two occasions. On April 9, 2009, Dr. Milne conducted the exam that formed the basis of his IME report. Based on the medical records, including the MRI, and the exam, he diagnosed a contusion of the knee, left knee pain, possible internal derangement, including meniscal tear or chondral injury. He related this diagnosis to Claimant's fall on July 15, 2008. Dr. Milne felt Claimant had two choices: he could either undergo another MRI scan to further evaluate his knee or undergo a diagnostic arthroscopy. He testified it was evident from the records Claimant had a prior injury with degenerative changes that he felt pre-dated his work injury of July 2008.

On December 3, 2009, after he had undergone arthroscopic surgery of the knee by Dr. Sedgwick, Claimant returned to see Dr. Milne. Without benefits of the medical records, Dr. Milne noted Claimant was doing quite well and did not require any additional treatment. He could continue working full duty.

On September 27, 2010, after reviewing additional medical records, Dr. Milne generated a final report. Dr. Milne testified the operative report identified Claimant had grade III and small areas of grade IV chondromalacia (softening of the cartilage), but did not specifically identify any acute changes. He states these are arthritic changes that were evidenced in Claimant's 1999 surgery, at which time he was also noted to have grade III changes. It was Dr. Milne's opinion Claimant did not have any acute-type injury that could be associated with his July 15, 2008 work injury. Dr. Milne testified Claimant had synovitis from striking his knee, which caused acute inflammation and swelling. With the benefit of hindsight, the knee may have become painful because of the work injury, but Claimant did not materially change the structural soundness of his knee when he fell at work.

He disagreed with Dr. Volarich's comment that there was an acute-type finding in the lateral facet. Dr. Milne quoted directly from Dr. Sedgwick's operative report that the lateral facet was involved with what turned out to be grade III chondromalacia. It was Dr. Milne's opinion Claimant had permanent partial disability of 6%, but stated this was entirely pre-existing his work injury. In his opinion, there was no permanent disability associated with the July 15, 2008 work injury because of the operative findings and lack of acute changes.

Dr. David Volarich, who evaluated Claimant at his attorney's request on May 27, 2010, is board certified in nuclear medicine, occupational medicine, and as an independent medical examiner. Based on his review of the medical records and the diagnostic testing, he felt Claimant had a left knee arthroscopic chondroplasty of the patellafemoral joint. He attributes the need for surgery to his work injury of July 15, 2008, because of the symptoms experienced by Claimant and the fact that he was doing fairly well prior to his work injury. Dr. Volarich also stated he believes Claimant sustained damage to the lateral facet at the time of his July 15, 2008 work injury. Dr. Volarich assigned a 30% PPD of the left knee due to the chondral injury to the lateral patellar facet that required chondroplasty. The rating accounts for this injury's contribution to discomfort, crepitus, swelling and weakness in the left lower extremity. He assigned an additional 20% PPD of the left knee due to the chondroplasty of the patellofemoral joint from 1997, which accounts for aching, discomfort, and difficulties with standing on ladders

for prolonged times leading up to July 15, 2008. He testified a loading factor should be added due to the combination of the preexisting and primary disabilities.

### **RULINGS OF LAW**

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 the following:

#### **I. Accident.**

Pursuant to § 287.020.2<sup>3</sup>, “[t]he word ‘accident’ as used in [Chapter 287] shall mean 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.” The evidence is undisputed that Claimant sustained an accident that arose out of and in the course of his employment. Claimant was carrying a material down temporary stair that had a steep incline and larger than usual steps when he stumbled and fell, striking his knee. Claimant complained of pain and burning in his knee following the incident, and was referred for medical attention at Barnes Care. Based on this evidence, I find Claimant met his burden of establishing an accident.

#### **II. Causation.**

The Workers’ Compensation Act provides that an injury by accident is not compensable unless the accident is the “prevailing” cause ( *i.e.*, “the primary factor, in relation to any other factor”) of both the resulting medical condition and disability. § 287.020.3(1); *Payne v. Thompson Sales Co.*, 322 S.W.3d 590, 591 (Mo.App. S.D. 2010). “The claimant in a worker's compensation case has the burden to prove all essential elements of her claim including a causal connection between the injury and the job.” *Royal v. Advantica Rest. Group, Inc.*, 194 S.W.3d 371, 376 (Mo.App. W.D.2006)(citations omitted). “‘Medical causation, which is not within common knowledge or experience, must be established by scientific or medical evidence showing the relationship between the complained of condition and the asserted cause.’ ” *Lingo v. Midwest Block & Brick, Inc.*, 307 S.W.3d 233, 236 (Mo.App. W.D.2010)(quoting *Gordon v. City of Ellisville*, 268 S.W.3d 454, 461 (Mo. App. E.D. 2008).

In this case, there are different opinions as to what injury the accident caused, although there is general agreement that Claimant has grade III chondromalacia of the patella. The weight afforded a medical expert's opinion is exclusively within the discretion of the Commission (factfinder). *Sartor v. Medicap Pharmacy*, 181 S.W.3d 627, 630 (Mo.App. W.D.2006). Furthermore, where the right to compensation depends on which of two medical theories should be accepted, “the issue is peculiarly for the Commission's determination.” *Goerlich v. TPF, Inc.*, 85 S.W.3d 724, 731 (Mo.App. E.D.2002)<sup>4</sup>(citations omitted). Dr. Sedgwick, the treating doctor,

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<sup>3</sup> Unless otherwise indicated, all statutory references are to RSMo Supp. 2005.

<sup>4</sup> This is one of several cases cited herein that were among those overruled, on an unrelated issue, by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 224-32 (Mo. banc 2003). Such cases do not otherwise conflict with *Hampton* and are cited for legal principles unaffected thereby; thus I will not further note *Hampton's* effect thereon.

felt Claimant's injury "represented and aggravation of his pre-existing problem as grade III chondromalacia of the patella was noted in his 1998 arthroscopic chondroplasty. Dr. Milne acknowledged Claimant's knee swelled, but testified the grade III chondromalacia of the patella was evident at the time of the 1998 surgery, and there was no evidence of any acute change from that time which he could attribute to the 2008 accident. Only Dr. Volarich suggests Claimant sustained new damage to the lateral facet of the left knee when he fell at work.

I find the opinion of Dr. Milne that there was no acute change to the structure of the knee caused by the accident to be the most credible and consistent with the evidence. His experience as a surgeon puts him in a superior position to explain the significance of surgical findings and opine as to causation. Dr. Milne also had the advantage of examining Claimant before and after surgery. He explained how the findings identified in the 2008 operative report were unchanged from the findings in 1998. The 2008 accident could not be the prevailing cause of Claimant's grade III chondromalacia and resulting disability because the grade III chondromalacia existed in 1998. Dr. Milne testified Claimant had acute synovitis from striking his knee, which caused acute inflammation and swelling, but Claimant did not materially change the structural soundness of his knee when he fell at work. Dr. Volarich's opinion, that further chondral damage occurred, is not as consistent with the operative findings and other competent evidence.

The facts here are remarkably similar to those presented in *Gordon v. City of Ellisville*, 268 S.W.3d 454, 460 (Mo.App. E.D.,2008) where the authorized orthopedic surgeon who had recommended surgery to treat what he thought was a work related condition, testified that after he observed first-hand the damage to Claimant's shoulder, he found no evidence of acute injury, but did find damage that was long-term in nature. He diagnosed the work accident as a strain causing inflammation and found that the strain had no effect on Claimant's rotator cuff, which was chronically damaged. As did Dr. Milne here, the doctor in *Gordon* concluded the claimant did not have a disability as a result of the primary work accident<sup>5</sup>.

As in *Gordon*, Claimant did experience inflammation and pain as a result of the accident. The symptoms can attributed to synovitis, a contusion, as found by BarnesCare, or an aggravation of the prior chondral injury, as suggested by Dr. Sedgwick, the treating physician. However, aggravation of a preexisting disability is NOT enough to make the resulting condition compensable. In *Johnson v. Indiana Western Exp., Inc.* 281 S.W.3d 885, 891 (Mo.App. S.D. 2009), the court cited *Gordon v. City of Ellisville* at 459, which observed "aggravation of a preexisting condition arising out of and in the course of employment had been compensable prior to the 2005 amendments to § 287.020, but that the current version of §287.020 restricts compensation to injuries in which the work accident was the *prevailing factor* in causing the resulting medical condition and disability." Having found the work accident was not the prevailing factor in causing the medical condition of grade III chondromalacia and resulting disability, I find Dr. Sedgwick's opinion cannot support a finding of causation.

Based on the competent and substantial evidence, I find Claimant had acute synovitis from striking his knee, which caused acute inflammation and swelling. The knee became painful because of the work accident, but Claimant did not materially change the structural soundness of his knee or cause any addition chondral injury when he fell at work. I find Claimant's current

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<sup>5</sup> In *Gordon*, the issue of medical expenses was not at issue because Employer had already paid for the treatment. The issues of medical causation, TTD and PPD turned on which expert was more credible.

disability is the result of his grade III chondromalacia condition, and the work accident is not the prevailing cause of that condition or disability.

### III. Medical Expenses (Past and Future).

Claimant did sustain a compensable accidental injury (synovitis). Section 287.120.1 provides, in pertinent part, that “[e]very employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of employee's employment.” Section 287.140 provides, “[i]n addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.” An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of the medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those costs against his employer. *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 85 (Mo.App. E.D.1995).

Here, Employer's authorized treating physician, Dr. Milne, recommended two treatment options as of April 9, 2009: a high quality MRI or a diagnostic arthroscopy. Such treatment was necessitated by Claimant's symptoms and was to rule out a meniscal or acute chondral injury. Claimant requested such treatment, but Employer refused to follow its own physician's orders. In failing to authorize such treatment, Employer ceded control of treatment to Claimant, who was then free to pick his own provider and assess the costs against Employer. As it turns out, Dr. Sedgwick performed one of the options recommended by Dr. Milne: the diagnostic arthroscopy.

The fact the diagnostic arthroscopy failed to reveal an acute injury does not relieve Employer from responsibility for medical treatment. The surgery was reasonable and necessary to rule out a more insidious cause of Claimant's complaints. In the recent case of *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511, 518 (Mo.App. W.D. 2011), the court held the legal standard for determining an employer's obligation to afford medical care is clearly and plainly articulated in section 287.140.1 as whether the treatment is ***reasonably required to cure and relieve the effects of the injury***. The 2005 amendments to The Workers' Compensation Law did not... incorporate a “prevailing factor” test into the determination of medical care and treatment required to be afforded for a compensable injury by section 287.140.1. *Id.* at 519. I find the diagnostic arthroscopic procedure recommended by Dr. Milne and performed by Dr. Sedgwick to be reasonable and necessary to treat the symptoms that followed Claimant's work accident. The expenses associated therewith are Employer's responsibility.

Employee must establish the causal relationship between the bills for medical services and the treatment provided. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo. 1989). It is not necessary to have testimony on the medical-causal relationship of each individual expense where the causal relationship can reasonably be inferred. *Lenzini v. Columbia Foods*, 829 S.W.2d 482, 484 (Mo. App. 1992). Employee may establish the causal relationship through the testimony of a physician or through the medical records in evidence which relate to the

services provided. *Wood v. Dierbergs Market*, 843 S.W.2d 396, 399 (Mo. App. 1992); *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 738 (Mo. App. 1994).

Employer claims no liability for medical expenses because the statements of account indicate a zero balance. In *Ellis v. Missouri State Treasurer*, 302 S.W.3d 217, 225 (Mo.App. S.D. 2009), where the Second Injury Fund was seeking a credit for write offs, the court discussed the issue of such a claimed credit:

In summation, it was Claimant's burden to detail her past medical expenses and testify "to the relationship of such expenses to her compensable workplace injury." See *Farmer-Cummings v. Personnel Pool of Platte County*, 110 S.W.3d 818, 820 (Mo. 2003). Once that was accomplished, if the SIF wished to challenge the amount being sought by Claimant, it had the burden to establish by a preponderance of the evidence that that she "was not required to pay the billed amounts." *Id.* at 823.

I find Claimant met his burden of proving he incurred \$13,725.59 in medical expenses related to the treatment for his knee. I do not find Employer presented sufficient evidence to establish by a preponderance of the evidence that that Claimant was not required to pay the billed amounts. Employer is liable to Claimant for \$13,725.59.

Claimant seeks future medical treatment for his left knee condition. Future medical care must flow from the accident, via evidence of a medical causal relationship between the condition and the compensable injury, if the employer is to be held responsible. *Mickey v. City Wide Maintenance*, 996 S.W.2d 144, 149 (Mo.App. W.D.1999). Having found Claimant's left knee condition of grade III chondromalacia of the patella preexisted and is not causally related to the 2008 work accident, I find Employer has no liability for future medical care.

#### IV. Temporary Total Disability.

Claimant seeks to recover 5 1/7ths weeks of TTD compensation for the time period Dr. Sedgwick had him off work post-surgery. The purpose of a temporary, total disability award is to cover the employee's healing period. *Birdsong v. Waste Management*, 147 S.W.3d 132, 140 (Mo.App. S.D.2004). Temporary total disability awards should cover the period of time from the accident until the employee can either find employment or has reached maximum medical recovery. *Id.* Having found the diagnostic arthroscopy was recommended by the authorized treating physician, and was reasonable and necessary to cure and relieve the effects of the work injury, I find Claimant is entitled to recover TTD compensation to cover his healing period. Employer is liable to Claimant for \$3,973.01.

#### V. Permanent Partial Disability.

Claimant seeks to recover PPD benefits. On the claim for compensation for permanent partial disability, there are two issues to address. The first is whether medical causation evidence established the presence of a permanent partial disability. *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511, 523 (Mo.App. W.D. 2011). The second is the specific rating to be assigned to that disability. *Id.* As with all elements, there must be substantial and competent evidence on both issues.

The only ratings of disability of record are associated with Claimant’s chondromalacia. Dr. Milne provides a 6% PPD rating, all preexisting. Dr. Volarich attributes 30% PPD to the primary injury and 20% PPD to the preexisting. As discussed above, the medical causation evidence does not establish a causal link between the accident and the grade III chondromalacia. Aggravation of a preexisting condition is not compensable. Although I found the 2008 work accident caused acute synovitis, Claimant has no evidence establishing what, if any, permanent disability can be associated with synovitis. On the other hand, Employer has the opinion of Dr. Milne that there is no permanent partial disability associated with the 2008 work injury at all.

Based on the substantial and competent evidence, especially the opinion of Dr. Milne, which I find most credible and compelling overall, I find there is no permanent partial disability compensation due Claimant on account of his accidental injury of July 15, 2008.

VI. Second Injury Fund Liability.

Claimant seeks to recover Second Injury Fund benefits. Pursuant to §287.220, the Second Injury Fund’s liability is triggered when an employee with prior disability “receives a subsequent compensable injury *resulting in additional permanent partial disability...*” (emphasis added). There is no Second Injury Fund liability when, as here, there is no additional disability associated with the primary injury.

The claim against the Second Injury Fund is denied.

**CONCLUSION**

Claimant sustained an accidental injury arising out of and in the course of his employment when he fell on his previously disabled left knee. The accident caused him to have a swollen knee that reasonably and necessarily required an arthroscopic surgery to properly diagnose the injury. The accident was not the prevailing factor in the cause of his disability, grade III chondromalacia, or in any additional permanent partial disability.

Employer shall pay past medical expenses and TTD associated with the reasonable and necessary surgery. The claims for future medical, PPD benefits and Second Injury Fund compensation are denied.

Date: \_\_\_\_\_

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

KARLA OGRODNIK BORESI  
Administrative Law Judge  
Division of Workers' Compensation