

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

Injury No.: 03-105376

Employee: Phillip Hurn
Employer: Schoen Equipment, Inc.
Insurer: Universal Underwriters Insurance Company
Date of Accident: September 11, 2003
Place and County of Accident: Lawrence County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 22, 2006. The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued December 22, 2006, 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 25th day of July 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Phillip Hurn

Injury No. 03-105376

Dependents: N/A

Employer: Schoen Equipment, Inc.

Insurer: Universal Underwriters Insurance Company

Additional Party: Litton & Giddings Radiological Associates (Health Care Provider)

Hearing Date: October 4, 2006

Checked by: LTW

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: SEPTEMBER 11, 2003
5. State location where accident occurred or occupational disease was contracted: LAWRENCE CTY, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? YES
7. Did employer receive proper notice? YES
8. Did accident or occupational disease arise out of and in the course of the employment? YES
9. Was claim for compensation filed within time required by Law? YES
10. Was employer insured by above insurer? YES
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
While painting on a "fold-out" ladder, claimant fell approximately 6 feet, landing with his weight on his left knee.
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: LEFT KNEE
14. Nature and extent of any permanent disability: 17.5% of the left lower extremity
14. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? \$31,555.29
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$40.00
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:
 - Unpaid medical expenses: \$31,555.29
 - 21 weeks of temporary total disability (or temporary partial disability) \$840.00
 - 28 weeks of permanent partial disability from Employer \$1,120.00
 - N/A weeks of disfigurement from Employer

N/A --Permanent total disability benefits from Employer beginning, for Claimant's lifetime

22. Second Injury Fund liability: NO

TOTAL: \$33515.29

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:

John Cowherd

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Phillip Hurn Injury No. 03-105376

Dependents: N/A

Employer: Schoen Equipment, Inc.

Insurer: Universal Underwriters Insurance Company

Additional Party: Litton & Giddings Radiological Associates (Health Care Provider)

Hearing Date: October 4, 2006

Checked by: LTW

AWARD ON HEARING

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on October 4, 2006. The parties were afforded an opportunity to submit briefs. The parties, however, requested opportunity to settle the case and that an award not immediately issue. Subsequently, the parties were unable to reach an agreement, and in electing to not submit briefs, the parties allowed the record to be completed and submitted to the undersigned for issuance of an award on or about December 14, 2006.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about September 11, 2003 Schoen Equipment, Inc. was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Universal Underwriters Insurance Company.
- (2) On or about September 11, 2003 the claimant Phillip T. Hurn sustained an accident.
- (3) The above-referenced accident occurred in Lawrence County, Missouri. The parties agree to venue lying in Newton County, Missouri. Venue is proper.
- (4) The claimant notified the employer of his injury as required by Section,287.420, RSMo.
- (5) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.

- (6) The aforementioned accident of September 11, 2003 caused the claimant Phillip T. Hurn to be temporarily and totally disabled for the period of September 11, 2003 through February 4, 2004 (21 weeks).
- (7) The employer and insurer do not contest the nature and extent of permanent disability. The aforementioned accident of September 11, 2003 caused the claimant Phillip T. Hurn to sustain a permanent partial disability of 17.5 percent of the left lower extremity, referable to the left knee at the 160 week level.

The sole issues to be resolved by hearing include:

- (1) Whether, on or about September 11, 2003, and at all times relevant to this case, the claimant Phillip T. Hurn was an employee of the alleged employer Schoen Equipment, Inc.?
- (2) Whether the accident of September 11, 2003 arose out of and in the course of the claimant's alleged employment with the alleged employer?
- (3) Whether the employer and insurer are liable for payment of certain past medical care and expenses in the amount of \$31,555.29?
- (4) What is the proper compensation rate?
- (5) Whether the claimant is entitled to temporary disability benefits? (The claimant seeks 21 weeks of temporary total disability compensation, payable for the period of September 11, 2003 through February 4, 2004.)
- (6) Whether the claimant is entitled to permanent partial disability compensation, premised on the parties' stipulation of the claimant having sustained a permanent partial disability of 17.5 percent of the left lower extremity, referable to the left knee at the 160 week level?

EVIDENCE PRESENTED

The claimant testified at the hearing in support of his claim. Also, the claimant presented at the hearing of this case the testimony of his wife Nancy Hurn. In addition, the claimant offered for admission the following exhibits:

Exhibit A Medical Records and Bills
Exhibit B Summary of Medical Expenses
Exhibit C Deposition of James Schoen
Exhibit D Deposition of Phillip T. Hurn
Exhibit E Medical Report of David G. Paff, M.D.

The exhibits were received and admitted into evidence. Exhibit B, however, was admitted solely for demonstrative purposes and not for the truth of the matter asserted.

The employer and insurer presented at the hearing of this case the testimony of one witness – James O. Schoen. And, in light of the parties' stipulation the employer and insurer did not offer for admission any exhibits.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include: Notice of Hearing; Request for Hearing – Final Award; Dismissal of Medical Fee Dispute (Cox Health Systems); Notice of Services Provided & Request for Direct Payment (L. E. Cox Medical Center); Notice of Services Provided & Request for Direct Payment (Litton & Giddings Radiological Associates); Claim for Compensation; and Answer to Claim for Compensation. (The Claim for Compensation reflects two different dates of being received by the Division of Workers' Compensation.)

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

DISCUSSION

The claimant Phillip T. Hurn is 64 years of age, having been born on October 25, 1942. Mr. Hurn is a resident of Mt. Vernon, Missouri. Also, Mr. Hurn enjoys a varied work history involving physical labor, includes employment and self-employment involving farm work, driving trucks, and hauling cattle.

Schoen Equipment, Inc. is a family business located in Freistatt, Missouri, and is engaged in the business of selling and servicing John Deere products. As a small family business situated in a rural community, Schoen Equipment, Inc. owns and/or leases a couple of buildings, which are described as barns, and are utilized by the company as storage facilities. Notably, Schoen Equipment, Inc. is responsible for maintaining its buildings, including the barns or storage facilities that were worked on by Mr. Hurn during the alleged employment period in question.

Prior to September 2003 Mr. Hurn hauled equipment for Schoen Equipment, Inc., which involved a number of years working off and on for the company as a subcontractor to an individual who did hauling work for Schoen Equipment, Inc. Notably, in June 2003 Mr. Hurn approached James (Jim) O. Schoen (General Manager of Schoen Equipment, Inc. and a principal shareholder) about securing employment with the company. According to Mr. Schoen, Mr. Hurn told him he was "down on his luck and needed work." Further, according to Mr. Schoen, the company was not in a position to hire Mr. Hurn as an employee; but, individually, he agreed to hire Mr. Hurn to paint a building (barn) on the family homestead and other buildings of Schoen Investment. Apparently, Schoen Investment utilized several buildings, and Mr. Schoen assigned to Mr. Hurn the task of painting the buildings with a color that would match.

According to Mr. Hurn, he agreed to accept this work and be paid at the compensation rate of \$8.00 an hour, and he generally worked 40 hours a week. Mr. Hurn noted that he was not engaged in any painting business, as he owned no personal supplies and did not hold himself out as an entrepreneur or sole-proprietor, or painter. Rather, he simply performed the work (painting) given to him by Mr. Schoen, and kept track of the hours worked with a scratch pad situated in the back room of one of the company buildings. Additionally, Mr. Hurn noted that Mr. Schoen purchased or secured all of the supplies, including the paint and paint brushes; and Mr. Schoen instructed him to paint all the buildings by hand with a paint brush. Further, Mr. Hurn noted that he and Mr. Schoen did not agree to a specific completion date or specific salary or contract price for the work to be performed by Mr. Hurn.

Also, Mr. Hurn indicated that he wished to be paid in cash, and thus received cash payments for the painting he performed. According to Mr. Hurn he was always paid in cash by Mr. Schoen at Mr. Schoen's office at Schoen Equipment. According to Mr. Schoen, he, individually, and not Schoen Equipment, Inc. contracted with Mr. Hurn to provide the painting work, and he did not consider Mr. Hurn to be an employee of him or Schoen Equipment. Similarly, Mr. Schoen indicated that he, individually, and not Schoen Equipment, Inc. paid Mr. Hurn for his work. Notably, neither party identified any specific amount of money paid to Mr. Hurn for the work he performed in the painting of the buildings; nor did any party offer in evidence any pay stubs or tax documentation.

Mr. Hurn began painting the buildings for Mr. Schoen in or around June 2003. He continued to engage in this work until suffering an accident on or about September 11, 2003. Notably, on September 11, 2003, while painting off of a "fold-out" ladder, Mr. Hurn fell approximately 6 feet, landing with his weight on his left knee. Further, in falling to the ground Mr. Hurn twisted his left knee. This fall caused Mr. Hurn to experience immediate pain and swelling in his knee, and resulted in him being transported by ambulance (Barry-Lawrence County Ambulance District) to Cox-South Hospital in Springfield, Missouri. Initially, Mr. Hurn was treated in the emergency room, and thereafter was admitted into the hospital and received in-hospitalization care through September 13, 2003. During the course of this hospitalization Mr. Hurn came under the care of Pierre L. Clothiaux, M.D., who is an orthopedic surgeon with Ferrell Duncan Clinic.

Initially, during the hospitalization of September 11-13, 2003 the attending physicians treated Mr. Hurn with relocation of the left knee under anesthesia. Additionally, diagnostic studies of the left knee revealed tears of the medial and lateral meniscus, and multiple ligament tears, including tears of the anterior and posterior cruciate ligaments, and the lateral collateral ligament. Dr. Clothiaux prescribed medication, a knee immobilizer and crutches, and released Mr. Hurn from the hospital on September 13, 2003 with instructions to follow-up with him under outpatient care. Also, subsequent to this discharge, Mr. Hurn's primary care provider, Cheryl Williams, D.O., referred Mr. Hurn to Aurora Hospital for a diagnostic study in the nature of a duplex ultrasound, which ruled out deep venous thrombosis.

Subsequently, on or about September 22, 2003 Mr. Hurn presented to Dr. Clothiaux for preoperative evaluation for a cruciate ligament reconstruction of the left knee. In light of Mr. Hurn's presenting symptoms Dr. Clothiaux recommended that Mr. Hurn undergo open ligament reconstruction surgery for both the anterior and posterior cruciate and lateral collateral ligaments. With Mr. Hurn consenting to this surgery, Dr. Clothiaux proceeded with the scheduling of the recommended surgery on September 30, 2003, through Cox-South Hospital.

On or about September 30, 2003 Mr. Hurn returned to Cox-South Hospital and was admitted for the scheduled surgery. Thereafter, Dr. Clothiaux performed the surgery, which involved an open left knee ACL, PCL, and LCL reconstruction. Mr. Hurn remained in the hospital until being discharged on October 2, 2003. Notably, in discharging Mr. Hurn from the hospital Dr. Clothiaux propounded the following comments:

DISCHARGE DIAGNOSIS:

1. History of anterior knee dislocation
2. Partial avulsion of the posterior cruciate ligament from its femoral attachment, complete avulsion from the femoral attachment of the anterior cruciate ligament and lateral collateral ligament with posterior and lateral capsular tear.

SECONDARY DIAGNOSES:

1. Hypertension.
2. Non-insulin-dependent diabetes mellitus
3. Hyperlipidemia

Additionally, Dr. Clothiaux prescribed follow-up care that included physical therapy, and a prescription for being off work.

According to the parties stipulation Mr. Hurn ceased being temporarily and totally disabled on or about February 4, 2004. He then returned to full-time employment as a heavy equipment operator. Eventually, on or about September 9, 2004 Dr. Clothiaux released Mr. Hurn from care and to full activity, with instructions to use a neoprene sleeve when walking on inclines and to protect the knee, and with the additional instructions to avoid jumping and impact loads. Notably, at the time of this examination Dr. Clothiaux propounded the following comments:

The patient has made remarkable progress with his healing. He has been able to return to full-time employment as a heavy equipment operator. Notes mild aching in the anterior knee primarily when walking up stairs or inclines.

EXAM:

The incision is healed. Full extension. Flexion to 125 degrees with stability of the knee throughout the entire arc of motion. This includes anterior and posterior drawer, Lachman's pivot shift signs, and varus and valgus stress of the collateral ligaments. There is mild patellar crepitation.

David Paff, M.D., who is a physician practicing in the specialty of occupational medicine, provided testimony through the submission of his medical report. Dr. Paff performed an independent medical examination of the claimant on or about March 28, 2005. At the time of this examination, Dr. Paff took a history from Mr. Hurn, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of the claimant, Dr. Paff opined that the accident of September 11, 2003, wherein Mr. Hurn fell off of a ladder, caused Mr. Hurn to sustain an injury to his left lower extremity, which involved an "anterior knee dislocation and partial avulsion of the posterior cruciate ligament from its femoral attachment, complete avulsion from the femoral attachment of the anterior cruciate ligament, and lateral collateral ligament with posterior and lateral capsular tears."

Further, Dr. Paff testified that, in light of this injury, Mr. Hurn underwent a course of medical treatment that he considered to be reasonable. Additionally, Dr. Paff opined that Mr. Hurn had reached maximum medical improvement, and had sustained a permanent partial disability of 30 percent, referable to the left knee. In addition, at the time of his examination of Mr. Hurn on March 28, 2005, Dr. Paff opined that he did not believe Mr. Hurn required any additional treatment, although he did speculate as to the possibility, "over the long haul," of Mr. Hurn needing a total knee replacement.

FINDINGS AND CONCLUSIONS

The Workers' Compensation Law for the State of Missouri underwent substantial change on or about August 28, 2005. However, in light of the underlying workers' compensation case involving an accident date of November 18, 2003, the legislative changes occurring in August 2005 enjoy only limited application to this case. The legislation in effect on November 18, 2003, which is substantive in nature, and not procedural, governs substantively the adjudication of this case. Accordingly, in this context, several familiar principles bear reprise.

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W.2d 664 (Mo. App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo. Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo. App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo. App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Brufat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo. App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo. App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the

claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience which inclines the mind to believe but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo. App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575,577 (Mo. App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo. App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo. App. W.D. 1993).

I. Employment

After consideration and review of the evidence, including the testimonies of Phillip Hurn and James Schoen, I find and conclude that on or about September 11, 2003, and at all times relevant to this issue, Phillip Hurn was an employee of Schoen Equipment, Inc., and was working under and subject to The Missouri Workers' Compensation Law.

Although James Schoen paid Mr. Hurn directly, and in cash, he did so while acting in behalf of Schoen Equipment, Inc. Mr. Schoen possessed actual and apparent authority to contract in behalf of Schoen Equipment, Inc.; and he secured services for the benefit of Schoen Equipment, Inc., not him personally. Notably, Schoen Equipment, Inc., and not Mr. Schoen, owned or leased the buildings, which were used to store equipment. And, Schoen Equipment, Inc. was obligated to maintain the buildings, which necessarily includes periodic painting and the work performed by Mr. Hurn.

Also, in the course of securing employment, as well as performing the work in question, Mr. Hurn did not hold himself out as an independent contractor, or otherwise engage in business as a sole-proprietor. Further, Mr. Schoen provided all of the supplies and materials used by Mr. Hurn, and directed Mr. Hurn to paint the buildings/barns with a paint brush, as compared to other means of painting. Moreover, Mr. Hurn entered into the employment relationship in the context of being a temporary employee, paid at an hourly wage, and under an at will arrangement. Mr. Schoen, as the general manager of Schoen Equipment, Inc., enjoyed the right to terminate the relationship without incurring breach of contract liability. The right of an employer to terminate a relationship without incurring breach of contract liability is generally an indication of an employer-employee relationship and weighs against independent contractor status. *Dawson vs. Home Interiors & Gifts, Inc.*, 890 S.W.2d 747, 748 (MoApp. W.D. 1995).

Accordingly, I find and conclude that on September 11, 2003, Phillip Hurn sustained an injury by accident, which arose out and in the course of his employment with Schoen Equipment, Inc. The injury occurred as a consequence of Mr. Hurn falling off of a ladder while engaged in the painting of a building for Schoen Equipment, Inc. Therefore, Schoen Equipment, Inc., and its insurer Universal Underwriters Insurance Company, are liable to the employee Phillip Hurn for benefits provided under Chapter 287, RSMo.

II. Medical Care

The accident of September 11, 2003 caused Mr. Hurn to sustain an injury to his left lower extremity, which involved an "anterior knee dislocation and partial avulsion of the posterior cruciate ligament from its femoral attachment, complete avulsion from the femoral attachment of the anterior cruciate ligament, and lateral collateral ligament with posterior and lateral capsular tears." Further, the injury necessitated receipt of medical care that included two separate hospitalizations and a reconstructive surgery. This medical care, which was reasonable, necessary and causally related to the accident of September 11, 2003, resulted in Mr. Hurn incurring medical expenses in the amount of \$31,555.29.

Accordingly, the employer and insurer are ordered to pay to the employee past medical expenses in the amount of \$31,555.29.

The evidence is not supportive of a finding that the employee is entitled to future medical care. Therefore, future medical care is not awarded to the employee.

III.

Compensation Rate

The parties did not stipulate to a specific wage rate, and the employee failed to sustain his burden of proof in establishing an average weekly wage under Section 287.250, RSMo. Notably, neither party presented evidence of wages earned during Mr. Hurn's employment with Schoen Equipment, Inc. And, on cross-examination Mr. Hurn acknowledged that, while he agreed to an hourly wage of \$8.00 per hour, he had no idea of hours worked or monies earned.

Therefore, I find and conclude that the applicable compensation rate is the statutory minimal of \$40.00 per week.

IV. Temporary Total Disability Compensation

The evidence is supportive of a finding that, as a consequence of the September 11, 2003 accident, Mr. Hurn was temporarily and totally disabled for the period of September 11, 2003 through February 4, 2004 (21 weeks). Accordingly, I find and conclude that, as a consequence of the September 11, 2003 accident, Mr. Hurn was temporarily and totally disabled for the period of September 11, 2003 through February 4, 2004 (21 weeks). Therefore, the employer and insurer are ordered to pay to the employee the sum of \$840.00, which represents 21 weeks of temporary total disability compensation, payable at the applicable compensation rate of \$40.00 per week.

V. Permanent Partial Disability Compensation

The evidence is supportive of a finding that, as a consequence of the September 11, 2003 accident, Mr. Hurn sustained an injury that resulted in him suffering permanent partial disability. In this regard, the parties stipulated to the permanent partial disability being 17.5 percent of the left lower extremity, referable to the left knee at the 160 week level (or 28 weeks of permanent partial disability). The parties' stipulation is reasonable and supported by the evidence.

Accordingly, I find and conclude that, as a consequence of the September 11, 2003 accident, Mr. Hurn sustained an injury that resulted in him suffering 28 weeks of permanent partial disability (or 17.5 percent of the left knee). Therefore, the employer and insurer are ordered to pay to the employee the sum of \$1,120.00, which represents 28 weeks of permanent partial disability, payable at the applicable compensation rate of \$40.00 per week.

VI. Medical Fee Dispute -- Direct Pay (Medical Fee Dispute Number 03-00689)

Two separate health care providers filed medical fee disputes (Notice of Services Provided & Request for Direct Payment) in this case. These medical fee disputes include: (1) Medical Fee Dispute Number 03-00689, which was filed by the Health Care Provider Litton & Giddings Radiological Associates; and (2) Medical Fee Dispute Number 03-00769, which was filed by the Health Care Provider L. E. Cox Medical Center. However, at the time of the hearing only one medical fee dispute remained open and subject to adjudication – Medical Fee Dispute Number 03-00689. ^[1]

In regards to Medical Fee Dispute Number 03-00689 the Health Care Provider Litton & Giddings Radiological Associates did not appear for the evidentiary hearing and did not present any evidence in support of its request for direct payment. In addition, the parties appearing at the evidentiary hearing did not offer any evidence of any agreement by either party to pay an agreed upon amount to Litton & Giddings Radiological Associates, relative to services identified in the medical fee dispute application. Accordingly, the Notice of Services Provided & Request for Direct Payment in Medical Fee Dispute Number 03-00689 is denied.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Date: _____December 22, 2006_____

Made by: _____/s/ L. Timothy Wilson_____
L. Timothy Wilson
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____/s/ Patricia "Pat" Secrest _____
Patricia "Pat" Secrest

Director
Division of Workers' Compensation

[1] Prior to the hearing the Health Care Provider L. E. Cox Medical Center moved to dismiss its medical fee dispute by filing a Dismissal of Medical Fee Dispute. In accordance with said motion, Medical Fee Dispute Number 03-00769 was dismissed by the Division of Workers' Compensation.