

FINAL AWARD ALLOWING COMPENSATION
(Modifying the Award and Decision of Chief Administrative Law Judge)

Injury No.: 04-140515

Employee: Stephen Johnson
Employer: Jefferson City Public Schools
Insurer: Missouri Retailers Insurance Trust
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: February 28, 2004
Place and County of Accident: Cole County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by §287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, and considered the entire record. Pursuant to §286.090 RSMo, the Commission modifies the award and decision of the administrative law judge dated January 30, 2008.

The Commission affirms all findings and conclusions of law made by the administrative law judge, but for the determination concerning the issue of future medical care and treatment. The administrative law judge concluded that the employee failed to meet his burden of proof with regard to the need for future medical treatment. The administrative law judge found that the employee was not entitled to future medical treatment because the only specific recommendations for future medical care relate to employee's left knee.

The Commission disagrees with that determination as employee has demonstrated a need for future medical care and treatment with regard to his hip.

The need for future medical care need not be established as a certainty, but it must be established as being reasonably probable through competent, medical testimony. *Bowers v. Highland Dairy Company*, 132 S.W.3d 260, 270 (Mo. App. S.D. 2004).

Section 287.140.1 RSMo provides:

[T]he 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.

In addition, §287.140.8 RSMo provides:

The employer may be required by the division or the commission to furnish an injured employee with artificial legs, arms, hands, surgical orthopedic joints, or eyes, or braces, as needed, for life whenever the division or the commission shall find that the injured employee may be partially or wholly relieved of the effects of a permanent injury by the use thereof.

The administrative law judge found that employee's hip condition, including the need for hip replacement surgery, was causally related to employee's work; however, failed to award future medical care for employee's hip condition. The administrative law judge erred in failing to award future medical care for employee's hip as the need for future medical care was established as being reasonably probable through competent, medical testimony. Dr. Volarich specifically addressed the need for future medical care and treatment with regard to employee's hip in his report dated April 3, 2007. Dr. Volarich stated the following:

[T]he hip prosthesis has a life expectancy of somewhere around 15 years, after which time it would need to be removed and replaced. The hip prosthesis can also become infected, loosen or fail which would need to be replaced in an earlier time interval. The decision to perform any additional surgeries on his hip should be made in conjunction with his wishes, progressive symptoms and expert surgical opinion. I would estimate that he would require at least one change out of the hip prosthesis in his lifetime.

The medical evidence clearly establishes that employee will need ongoing medical care and treatment for his hip. As such, pursuant to §287.140 RSMo, employee is entitled to an award of future medical care and treatment for his hip condition, including any additional hip replacement surgery.

The Commission concludes that the competent and substantial evidence supports a finding that employee is entitled to receive future medical care and treatment reasonably required to cure and relieve him from the effects of his occupational disease of the hip, including any future hip replacement surgery, and this benefit is awarded. As stated above, all remaining findings of fact and conclusions of law are affirmed.

The award and decision of Chief Administrative Law Judge Hannelore D. Fischer issued January 30, 2008, as modified, 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 1st day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Stephen Johnson

Injury No. 04-140515

Before the

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

Dependents: N/A

Employer: Jefferson City Public Schools

Additional Party:

Insurer: Missouri Retailers Insurance Trust

Hearing Date: December 6, 2007

Checked by: HDF/tmh

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? In part, see award
3. Was there an accident or incident of occupational disease under the Law? See award.
4. Date of accident or onset of occupational disease: See award.
5. State location where accident occurred or occupational disease was contracted: Cole County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? See award.
8. Did accident or occupational disease arise out of and in the course of the employment? See award.
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:
Employee was a teacher and wrestling and football coach.
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 hip.
 - Nature and extent of any permanent disability: 40% left hip.
15. 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? \$23,833.54.
18. Employee's average weekly wages: N/A.

19. Weekly compensation rate: \$678.96/\$347.05.

- Method wages computation: By agreement.

COMPENSATION PAYABLE

- Amount of compensation payable: Temporary disability - 15 weeks: \$10,184.40

Permanent disability - 40% left hip: \$28,735.74
Medical Expenses: - \$23,833.54

22. Second Injury Fund liability: Deferred.

23. Future Requirements Awarded: None.

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: Truman Allen

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephen Johnson

Injury No: 04-140515

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: Jefferson City Public Schools

Additional Party:

Insurer: Missouri Retailers Insurance Trust

Checked by: HDF/tmh

FINAL AWARD

The above-referenced workers' compensation claim was heard before the under-signed administrative law

judge on December 6, 2007. Memoranda were submitted by January 2, 2008.

The parties stipulated that the claimant, Stephen Johnson, was employed by the Jefferson City Public Schools on February 28, 2004. The employer, the Jefferson City Public Schools, was operating under the provisions of Missouri's Workers' Compensation Law and workers' compensation liability was insured by the Missouri Retailers' Insurance Trust. A Claim for Compensation was timely filed. The agreed upon compensation rate pertaining to the date of accident is \$678.96 per week for temporary disability benefits and \$347.05 per week for permanent disability benefits. No disability benefits have been provided and no medical aid has been provided.

It is my understanding that the issues to be resolved by hearing are 1) the occurrence of an occupational disease, 2) whether the alleged occupational disease arose out of and in the course of employment, 3) whether appropriate notice was provided, 4) the medical causation of the injuries alleged, 5) the liability of the employer/insurer for medical expenses, 6) the liability of the employer/insurer for temporary disability benefits from August 2, 2005, through November 14, 2005, 7) the nature and extent of permanent disability, and 8) the liability of the employer for future medical treatment.

The issue of Second Injury Fund liability is deferred.

FINDINGS OF FACT

The claimant, Stephen Johnson, was 59 years old as of the date of the hearing. From 1973 through 2005, Mr. Johnson was employed by the Jefferson City School District as a physical education teacher at the high school, as well as an assistant football coach and head wrestling coach since 1976. Mr. Johnson was an active and successful wrestling coach and to this day holds the record as the coach with the second most wins in wrestling in the state of Missouri.

Specifically, Mr. Johnson worked with the heavier wrestlers during wrestling season, which lasted from the beginning of November through the end of February. Mr. Johnson described the objective in wrestling as taking your opponent from a standing position to the mat; a great deal of hip pressure is applied to accomplish this. The "grapevine" maneuver in wrestling, as described by Mr. Johnson, utilizes the leg from hip to knee to take down an opponent, in Mr. Johnson's case this would always be his left leg; this was a maneuver commonly utilized by Mr. Johnson in teaching and showing wrestlers how to compete successfully with a heavier opponent. Another popular wrestling maneuver described by Mr. Johnson is the "takedown", involving explosion and power from the hips. Mr. Johnson also coached football, both blocking and tackling. Again, Mr. Johnson described the hips as "doing the hitting" when blocking. As a physical education teacher Mr. Johnson would demonstrate what he taught, including basketball, golf and badminton. Mr. Johnson is claiming that his years of coaching wrestling and football as well as his years of teaching injured his left hip and left knee.

Mr. Johnson testified to a left knee injury when he was in college. In addition, Mr. Johnson had early degenerative arthritis diagnosed in both knees during the 1990's by Dr. James Leslie, a local orthopedic surgeon.

Mr. Johnson gave up coaching football at the end of the 2002 season; Mr. Johnson gave up wrestling when the season ended in February of 2004. It was sometime around the time that Mr. Johnson gave up his position as wrestling coach that he learned from Dr. Snyder that there was a connection between his activities on behalf of the high school and his left hip pain. Mr. Johnson notified the school district of his claim in June of 2004; Mr. Johnson quit teaching on a full-time basis in 2005; in August of 2005, Dr. Sonny Bal performed left hip replacement surgery.

Mr. Johnson described his progress after the August 2, 2005, hip replacement surgery, stating that he went from a walker to a cane; Mr. Johnson was able to resume teaching for the school district in mid-November of 2005. It was almost a year before Mr. Johnson was able to walk without even the sporadic use of a cane. Currently, Mr. Johnson infrequently takes Aleve or ibuprofen for hip or knee pain. Stooping and bending at the waist cause Mr. Johnson some pain. Mr. Johnson has a self-imposed 50-pound weight limit for carrying. Mr. Johnson is an avid golfer and still plays golf several times a week, "as often as possible."

Dr. Michael Snyder, M.D., was the high school's team physician for some years and he apparently provided Celebrex to Mr. Johnson on occasion. In April of 2000, Dr. Snyder formally evaluated Mr. Johnson's left knee. Dr. Snyder's history taken from Mr. Johnson includes left knee pain dating back to December of 1999, with "two incidents of twisting." There is also a reference to a "pop" in the knee after wrestling with a heavy weight wrestler. Apparently Mr. Johnson reported a worsening of symptoms with activity. Dr. Snyder found, after x-rays, "fairly significant degenerative changes in the patellofemoral joint and the medial compartment" and diagnosed degenerative arthritis. Dr. Snyder suggested taking Vioxx and discussed the possibility of Synvisc injections and the probability of a knee replacement.

In September of 2003, at Mr. Johnson's request, Dr. Snyder wrote a letter stating that Mr. Johnson needs to be able to drive his golf cart because of severe degenerative arthritis in his hip. A similar letter was requested and provided in 2004.

In November of 2004, Mr. Johnson asked Dr. Snyder to write a letter to his workers' compensation carrier stating that his left hip pain is the result of coaching. Dr. Snyder wrote a letter stating that Mr. Johnson sustained "multiple injuries to the hip" secondary to his coaching duties and that the "activities" of coaching have "contributed" to Mr. Johnson's arthritis of the left hip.

In February of 2005, Dr. Snyder again wrote a letter stating that because of "severe degenerative arthritis of the hip," Mr. Johnson should be allowed to drive his golf cart rather than walk.

In August of 2005, Mr. Johnson had his left hip replaced by Dr. Sonny Bal; Mr. Johnson mentioned an increase in left knee pain after he was rolled over after surgery.

Dr. David Volarich, D.O., evaluated Mr. Johnson on April 3, 2007, and took a history of left hip pain from 2002 forward "without known trauma or specific incident." Dr. Volarich also noted incidents of knee pain dating back to the mid 1990's; specifically, in 1999, Dr. Volarich noted an injury to Mr. Johnson's left knee, which occurred while wrestling. Mr. Johnson experienced a "popping" in the knee followed by pain and swelling in the knee. Mr. Johnson had an increase in episodic left knee pain thereafter. Dr. Volarich also noted the increase in left knee pain when Mr. Johnson was rolled over after left hip replacement surgery in 2005.

Dr. Volarich opined that Mr. Johnson's activities as a wrestling coach, leading up to February of 2004, are the substantial contributing factors causing the aggravation and progression of his left hip degenerative arthritis that required the total hip replacement, as well as the aggravation and progression of his left knee arthritis.

Dr. Volarich opined to a permanent disability of 65% of the left hip as the result of "injuries sustained leading up to 2/04, while in the employ of Jefferson City Public Schools" and a 15% permanent disability of the left hip for "medical conditions preexisting 2/04." With regard to future medical treatment, Dr. Volarich opined generally to medications and physical therapy for a "pain syndrome" and to cortisone and Synvisc injections for the left knee, as well as an eventual left knee replacement.

Dr. Joseph Ritchie, M.D., board certified in orthopedics, evaluated Mr. Johnson in December of 2004. Dr. Ritchie found Mr. Johnson to have degenerative osteoarthritis unrelated to his work as a coach. Dr. Ritchie defined Mr. Johnson's osteoarthritis as "a pathologic condition that is going on inside of his hip, and it was not caused by a workplace."

During cross-examination, Dr. Ritchie said that genetics are the major factor in determining the occurrence of osteoarthritis, but that activity can accelerate the advancement of arthritis once it is "entrenched."

Dr. Sonny Bal, the surgeon who performed Mr. Johnson's left hip replacement, described Mr. Johnson as having "end-stage degenerative changes noted on x-ray" in discussing Mr. Johnson's left hip in his treatment notes. At the conclusion of Mr. Johnson's treatment for his left hip replacement, Dr. Bal, in a note dated October 3, 2005, stated that Mr. Johnson was playing golf and doing reasonably well; Dr. Bal recommended a return appointment for Mr. Johnson in about three months, but predicted that he would see him sooner due to the condition of Mr. Johnson's left knee. Dr. Bal's hospital notes dated August 6, 2005, refer to Mr. Johnson's impending release from the hospital after the hip replacement surgery and to Mr. Johnson's arthritic left knee which Dr. Bal states will ultimately need knee replacement.

- APPLICABLE LAW

Aggravation of a preexisting disease or infirmity caused by non-accidental conditions of employment is compensable as either an accident or as an occupational disease. Smith v. Climate Engineering, 939 S.W.2d 429 (Mo.App. E.D. 1996).

The workers' compensation statute requiring the claimant to give written notice of injury not later than 30 days after the accident does not apply to claims of occupational disease. Elgersma v. DePaul Health Center, 829 S.W.2d 35 (Mo.App. E.D. 1992), rehearing and/or transfer denied (April 1, 1992), transfer denied (June 2, 1992).

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. ... (17) Loss of one leg at the hip joint or so near thereto as to preclude the use of artificial limb 207

The right to medical aid is a component of the compensation due an injured worker. Jones v. D & D Services, L.L.C., 91 S.W.2d 3rd 214, 220 (Mo. App. W.D. 2002). Future medical care and treatment are provided for in Section 287.140(1) of the Missouri Workers' Compensation Act which states:

An employee is entitled to receive medical treatment as may reasonably be required to cure and relieve from the effects of the injury or disability.

The employee has the burden of proof that medical care past, present and future is causally related to the accidental injury. Dean v. St. Luke's Hospital, 936 S.W.2d 601, 603 (Mo. App. W.D. 1997).

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AWARD

All the physicians who treated or evaluated Mr. Johnson agree that Mr. Johnson has substantial degenerative arthritis in his left hip and the arthritis has been or could have been accelerated by activity. Dr. Snyder describes the coaching activity as “contributing” to the arthritis in the hip while Dr. Ritchie said that activity can accelerate the advancement of entrenched arthritis. Dr. Volarich describes the impact of the pre-February 2004 coaching activities as substantial contributing and prevailing and primary factors in causing the aggravation and progression of the left hip and left knee degenerative arthritis.

No physician said that Mr. Johnson’s osteoarthritis was caused by his coaching or teaching activities. However, all agree that the osteoarthritis was hastened along by the activity and Dr. Snyder and Dr. Volarich opined that the activities of coaching and teaching, specifically, were responsible for the progression of the arthritis, although Dr. Snyder referred only to the arthritis in the hip in his letter addressing causation.

The claimant, Stephen Johnson, has sustained his burden of proof that he sustained a compensable occupational disease and injury to his left hip as the result of his years of coaching wrestling and football and teaching physical education. The medical evidence supports a finding that Mr. Johnson’s years of physical exertion on behalf of the Jefferson City High School have resulted in the aggravation of the degenerative arthritis in his left hip. Mr. Johnson has not, however, sustained his burden of proof that he sustained a compensable occupational disease and injury to his left knee as the result of years of his work for the Jefferson City High School. There was significant evidence that Mr. Johnson sustained specific trauma to his left knee prior to 2004 and there was no medical evidence that an occupational disease, rather than an accident, caused his left knee deterioration. Dr. Snyder did not address the left knee, while Dr. Volarich just referred generally to pre-February of 2004 wrestling coach activities as the cause of the left knee deterioration, without distinguishing between the specific 1999 trauma, which is not plead here and the occupational disease which is. The issues of the occurrence of the occupational disease, its origin in the workplace, and medical causation are addressed in this and the preceding paragraph.

The issue of notice is decided favorably to the claimant, where the evidence is that Mr. Johnson notified the school district of his occupational disease in the left hip as the result of teaching and coaching on June 24, 2004, shortly after he was advised by Dr. Snyder that his hip pain was work related. Mr. Johnson gave notice as soon as practicable of his left hip pain and its connection to his work activities.

The employer/insurer is liable for the medical bills related to the left hip treatment and surgery. The amounts which are the responsibility of the employer/insurer are as follows: University Physicians - \$3,739.83; University of Missouri Health Care - \$19,573.71; out of pocket expenses - \$520.00. The total amount of medical expenses for which the employer/insurer is liable is \$23,833.54

The employer/insurer is liable for temporary total disability benefits from August 2, 2005, through mid November of 2005, when he returned to his teaching activities after his hip replacement surgery, a period of approximately 15 weeks.

The employer/insurer is liable for permanent total disability of 40% of the left hip. This finding is based on the opinion of Dr. Volarich, as well as the testimony of Mr. Johnson that, although he has some limitations, he is still able to engage in an active lifestyle, including golfing, regularly.

The claimant, Stephen Johnson, has failed to satisfy his burden of proof that he is in need of future medical care. The only specific recommendations for future medical care relate to Mr. Johnson’s left knee. The left knee and the denial of benefits for the left knee are discussed above.

Date: _____

Made by: _____

HANNELORE D. FISCHER

A true copy: Attest:

Jeffrey Buker
Director
Division of Workers' Compensation