

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

Injury No.: 00-008260

Employee: James Lovings

Employer: Ford Motor Company

Insurer: Self-Insured

Date of Accident: January 24, 2000

Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 July 27, 2004, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued July 27, 2004, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 14<sup>th</sup> day of March 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

Attest: \_\_\_\_\_  
John J. Hickey, Member

\_\_\_\_\_  
Secretary

**AWARD**

Employee: James Lovings

Injury No.: 00-008260

Dependents: N/A  
Employer: Ford Motor Company  
Additional Party: N/A  
Insurer: Self-Insured  
Hearing Date: April 6, 2004

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: JED:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
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? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes, Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: James Lovings Injury No.: 00-008260

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$867.72
19. Weekly compensation rate: \$578.48/\$303.01
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

23. Future requirements awarded: N/A

Said payments to begin N/A 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 N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

N/A

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

Employee:	James Lovings	Injury No.: 00-008260
Dependents:	N/A	Before the
Employer:	Ford Motor Company	<b>Division of Workers'</b>
Additional Party:	N/A	<b>Compensation</b>
Insurer:	Self-Insured	Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
		Checked by: JED

This case involves a disputed knee injury claimed by Claimant with the reported accident date of January 24, 2000. The Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund ("SIF") is a party to this Claim. All parties are represented by counsel.

### Issues

1. accident;
2. whether injury arose "out of" and "in" the course of employment;
3. nature and extent of temporary total disability;
4. nature and extent of permanent partial disability.

### FINDINGS OF FACT

1. The applicable compensation rates are \$494.14 for temporary total disability and \$303.01 for permanent partial disability.

2. The parties stipulated that Employer paid no interim benefits and none are sought.
3. Claimant testified that on January 11, 2000, a rack of doors slammed down onto a turntable striking his knee. Claimant limped around for a while and finished his shift. He lost no time from work during the succeeding days.
4. Claimant first treated at the plant medical department a few days to a week after the injury. There, he saw a nurse or nurses, said that he just wanted to report the injury, described the injury, received pain medicine, and left the medical department without asking to see a doctor. Claimant testified that nurse Steve would know that he reported the injury that day. Claimant admitted that there was no record of this visit, and stated that visits were not always recorded.
5. Claimant testified that he went back to the plant medical department on January 24, 2000, and saw Dr. Thomas. Claimant testified that on January 24, 200, he told the nurse how he injured his knee and told Dr. Thomas that a 2000 pound turntable hit his knee, and that it was swelling up all the time. Claimant said that Dr. Thomas saw the swelling, and told him he was getting old. Claimant admitted that no such information was contained in the nurse's record or in Dr. Thomas's record of January 24, 2000.
6. Claimant testified that he left work on about February 4, 2000, and was treated by a Dr. Belew, who ordered diagnostic studies, including an MRI and arthrogram, which were read as normal. He stayed off work about six months.
7. On direct examination, Claimant testified that he went to physical therapy 2-3 days a week for the six months he was off work.
8. On cross examination, he testified that he would not dispute medical records showing that he missed six out of the first eight physical therapy sessions scheduled in February and March, 2000, that he did not attend a single physical therapy session scheduled in April, 2000, and that therapy was discontinued on April 24, 2000 because he was a no-show for numerous appointments.
9. Claimant admitted that Dr. Belew ended their physician-patient relationship, because he forged the doctor's signature on three credit disability applications. As justification, Claimant said that Dr. Belew charged \$5.00 a page, which he stated he could not afford.
10. Claimant stated that he went back to work in mid-July, 2000, and worked on the line until he left his employment.
11. Claimant admitted operating a Go-Art business in the summer of 2003, and that he was videotaped in this activity.
12. Co-employee Butch Johnson testified that he was working near Claimant on January 11, 2000, and saw the rack fall and the ramp come down on Claimant's knee. On cross examination, Mr. Johnson admitted that he was Claimant's partner, and testified, contrary to Claimant, that Claimant went to the plant medical department on January 11, 2000, and that he did not continue working after the injury because he was unable to do so.
13. Steven Payne, a certified occupational health nurse, testified that a record is kept of all employee visits to the Ford medical department. The record is made during a face to face interview, and nurses type the record into the computer as employees give them information.
14. Mr. Payne testified that Claimant's first recorded visit to the Ford medical department in the year 2000 was on January 24th. Mr. Payne testified that a record would have been made if Claimant had visited the Ford Medical Department and reported a work injury, as he testified, before January 24, 2000. There was no record of any such visit.
15. The history provided by Claimant to Mr. Payne on January 24, 2000, was "Having pain in rt knee past 1 ½ weeks, recalls no single incident, just hurting, relates it to getting in and out of unit to put hoses on." Mr. Payne

examined Claimant's right knee on January 24, 2000. He did not see any swelling, effusion, or bruising. Range of motion was intact.

16. Claimant also saw the plant physician, Dr. Thomas, on January 24, 2000. The history recorded by Dr. Thomas on January 24, 2000, was: "Pt has noted pain in the rt knee associated with getting up from a seated position."

17. On February 2, 2000, Claimant saw Dr. Scott Anderson. Dr Anderson's record does not contain any history of any acute injury. On examination, there was no effusion, no warmth, or erythema, no localized tenderness, no instability, no crepitus, and full range of motion.

18. On February 3, 2000, Claimant saw orthopaedist Mark Belew, M.D., of the Northland Orthopaedic Group, who had treated him for ankle injuries in 1996 and 1998. The record contains a statement signed by Claimant on February 3, 2000, stating that his symptoms began or the accident happened "2 weeks ago." Next to the question, "If this is an injury, where did it happen, home, work, or other?," "other" is checked with an injury time of: "Approx 1-13-000." Next to "How did the accident happen?" is written "unknown."

19. Subsequently, in a letter dated February 3, 2000 to Dr. Anderson, Dr. Belew said that Claimant had a work related injury where a load of heavy doors dropped approximately a foot and forced his knee into an awkward position. To rule a meniscus tear in or out, Dr. Belew ordered an MRI.

20. On February 4, 2000, Claimant went to the plant medical department and said that his right knee was injured on January 11, 2000 when a rack fell and hit him on the knee.

21. The MRI performed on February 7, 2000, was normal. Dr. Belew reported that there was no evidence of any medical or ligaments damage, and prescribed physical therapy.

22. Claimant appeared for physical therapy on February 11, 2000, but did not appear for six out of the next seven scheduled therapy appointments, up to and including March 1, 2000.

23. Due to Claimant's continued complaints, Dr. Belew in late May, 2000, ordered an arthrogram, which was performed on June 9, 2000, and showed no evidence of abnormality.

24. On July 13, 2000, Dr. Belew terminated his relationship with Claimant, because Claimant filled out and signed Dr. Belew's name to several credit disability applications. On July 17, 2000, Claimant returned to work.

## RULINGS OF LAW

### Compensability

The claimant bears the burden of proving that not only did an accident occur, but it also resulted in an injury. Silman v. William Montgomery & Associates, 891 S.W.2d 173, 175 (Mo.App. E.D. 1995); McGrath v. Satellite Sprinkler Systems, 877 S.W.2d 704, 708 (Mo.App. E.D. 1994). The record at hand comprises a litany of Claimant's statements found inconsistent with the contemporaneous medical records and actions that are inconsistent with a work related injury. While impressive details of the equipment, weights and procedures on the assembly line were provided by Claimant preliminary to a description of the alleged accident, no credible evidence is found regarding work related injury. Claimant finished his shift and did not lose anytime from work during the weeks following the accident.

The record contains many instances of inconsistent statements regarding history and condition when compared to the medical records of company doctors and outside providers alike. Most importantly, Claimant incredulously suggests the excuse for signature forgery and insurance misrepresentation was his inability to pay excessive five dollar service charges. This seems anomalous since Claimant earns sufficient wages to entitle him

to the maximum allowable PPD rate. Claimant did not seek redress of these charges despite having retained the assistance of counsel.

Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain his burden of proof. Claim denied. The other issues are moot.

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

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

JOSEPH E. DENIGAN  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Reneé T. Slusher  
*Director*  
*Division of Workers' Compensation*