

FINAL AWARD ALLOWING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge
by Separate Opinion)

Injury No.: 02-046057

Employee: Central McClellion
Employer: Kansas City Chiefs
Insurer: TIG Insurance Company

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 and briefs, heard the parties' oral arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision modifying the August 24, 2010, award and decision of the administrative law judge (ALJ). We adopt the findings, conclusions, decision, and award of the ALJ to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

The ALJ found that the May 3, 2002, injury was a substantial factor in causing employee's low back and right hip conditions. She found that employee sustained 20% permanent partial disability of the right hip at the 207 week level and 13% permanent partial disability of the body as a whole referable to the low back. The ALJ, therefore, found employer liable to employee for 93.4 weeks of compensation, or \$30,767.82. The ALJ also found employer liable to employee for future medical care as a result of the May 3, 2002, injury.

With regard to wages and benefits already paid by employer, the ALJ ruled, pursuant to § 287.270 RSMo, that employer should receive a dollar-for-dollar credit against any disability benefits owed based on the salary continuation benefits paid pursuant to the contract of \$101,967.41. However, the ALJ ruled that the \$105,667.35 in medical benefits paid pursuant to the contract should not be included in the dollar-for-dollar credit. Further, the ALJ ruled that neither the salary continuation nor medical benefits paid pursuant to the contract can be used as a credit against the future medical awarded.

While we agree with the ALJ's award of permanent partial disability benefits and future medical care, we find that the ALJ erred in disallowing employer a credit for the medical benefits paid to employee.

Section 287.270 provides:

No savings or insurance of the injured employee, nor any benefits derived from any other source than the Employer or the Employer's insurer for liability under this chapter, shall be considered in determining the compensation due hereunder; *except* ... Employers of professional athletes under contract shall be entitled to full credit for wages or benefits paid to the employee after the injury including medical, surgical, or

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hospital benefits to or for the employee or his dependents on account of the injury, disability, or death, pursuant to the provisions of the contract.

There is no dispute that the Kansas City Chiefs is an “[e]mployer of professional athletes under contract.” Under the statute, there is no dispute that the employer “shall be entitled to a full credit for wages or benefits paid to the employee after the injury including, **medical, surgical or hospital benefits** paid to or for the employee or his dependents on account of the injury, disability or death, pursuant to the provisions of the contract.” § 287.270 RSMo. (emphasis added).

The only appellate decision in Missouri since the professional athlete section was added to § 287.270 RSMo is *Dubinsky v. St. Louis Blues Hockey Club*, 229 S.W.3d 126 (Mo. App. 2007). In *Dubinsky*, the Missouri Court of Appeals for the Eastern District held:

The language of § 287.270 is plain and unambiguous, and no statutory construction is necessary. The Missouri Legislature created an exception for professional athletes under a contract, and gave the Employer of such athletes a credit for ‘wages or benefits’ paid to the athlete ‘after the injury.’ There is **no limitation or qualification to this credit in the statute.**

Id. at 131. (emphasis added).

The parties in this case stipulated that employer paid \$105,667.35 in medical benefits. This was paid “pursuant to the provisions of the contract.” Section 287.270 RSMo and *Dubinsky* clearly provide that this amount should be included in the total credit given employer against the workers’ compensation benefits owed.

For the foregoing reasons, we find that employer is entitled to a “full credit” against the Workers’ Compensation benefits awarded to employee for the \$101,967.41 in wages paid **and** the \$105,667.35 in medical benefits paid pursuant to the contract.

Also, contrary to the ALJ’s finding, we find that the afore-mentioned employer credit should be applied against the award of future medical.

In *Dubinsky*, the Court quotes with approval the administrative law judge’s award as follows:

This specific Missouri statute [§ 287.270] intentionally creates a credit on the Employer’s behalf for those wages paid out to a claimant who is a professional athlete pursuant to their employment contract after the injury. The credit is used to offset **all benefits** related to the compensation the employee would otherwise be entitled to receive under the Workers’ Compensation Act. Thus, so long as a professional athlete claimant’s first injury wages exceed the **benefits** the athlete would otherwise receive (following the work injury), the athlete/claimant is not entitled to **additional Workers’ Compensation benefits....**

Dubinsky, 229 S.W.3d at 129 (emphasis added).

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In summary, *Dubinsky* stands for the proposition that § 287.270 RSMo gives the employer a “full credit for wages or benefits paid ... pursuant to the provisions of the contract” against all workers compensation benefits, explicitly including “medical expenses.”

For the foregoing reasons, we modify the ALJ’s decision and find that employer is entitled to a “full credit” for the \$101,967.41 in wages paid **and** the \$105,667.35 in medical benefits paid pursuant to the contract. This full credit shall be applied against **all Workers’ Compensation benefits** awarded to employee in relation to the May 3, 2002, injury, including future medical care.

The award and decision of Administrative Law Judge Lisa Meiners, as modified, is attached and incorporated by reference.

The Commission further approves and affirms the administrative law judge’s allowance of attorney’s fees 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 29th day of March 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Central McClellion

Injury No. 02-046057

Dependents: N/A

Employers: Kansas City Chiefs

Insurers: TIG Insurance Company

Additional Party: N/A

Hearing Date: June 25, 2010

Checked by: LM/cy

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: May 3, 2002
5. State location where accident occurred or occupational disease was contracted: Kansas City, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did accident or occupational disease arise out of and in the course of the employment? Yes.
8. Was claim for compensation filed within time required by Law? Yes.
9. Was employer insured by above insurer? Yes.
10. Describe work employee was doing and how accident occurred or occupational disease contracted: On May 3, 2002, Claimant sustained injury of the low back and right hip during a scrimmage.
11. Did accident or occupational disease cause death? No. Date of death? N/A
12. Part(s) of body injured by accident or occupational disease: Right hip and low back.
13. Nature and extent of any permanent disability: 13% permanent partial disability body as a whole; 20% permanent partial disability of the right hip.
14. Compensation paid to-date for temporary disability: Received full wages but employer/insurer is entitled

to credit at the rate of weekly disability benefits the employer would have paid. Claimant was temporarily totally disabled.

- 15. Value necessary medical aid paid to date by employer/insurer? \$105,667.35
- 16. Value necessary medical aid not furnished by employer/insurer? N/A
- 17. Employee's average weekly wages: N/A
- 18. Weekly compensation rate: Maximum \$628.90/\$329.42
- 19. Method wages computation: Stipulation.

COMPENSATION PAYABLE

- 21. Amount of compensation payable:
 - 20% permanent partial disability of the right hip = 41.4
 - 13% permanent partial disability of the low back = 52
 - 93.4 x \$329.42
 -TOTAL: \$30,767.82

The employer is entitled to a credit of permanent partial disability and weekly temporary benefits pursuant to §287.270

- 23. Future requirements awarded: Yes
The employer is liable to Claimant for future medical care in order to cure and relieve the effects of the May 3, 2002 injury.

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: Mr. Brian Round.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Central McClellion

Injury No. 02-046057

Dependents: N/A

Employers: Kansas City Chiefs

Insurers: TIG Insurance Company

Additional Party: N/A

Hearing Date: June 25, 2010

Checked by: LM/cy

On June 25, 2010 the parties appeared for hearing. Central McClellion was represented by Brian Round. The Employer, Kansas City Chiefs, and Insurer, TIG Insurance Company, was represented by Tom Hill.

STIPULATIONS

The parties stipulated to the following:

- 1) that on or about May 3, 2002 the Kansas City Chiefs was an employer operating under and subject to the Missouri Workers' Compensation Law;
- 2) that employer's liability under said law was fully insured by TGI Insurance Company;
- 3) that Central McClellion was an employee of the Kansas City Chiefs;
- 4) that employee sustained an accident arising out of and in the course of his employment on May 3, 2002;
- 5) that employee notified employer of the injury as required by law;
- 6) that employee filed his claim within the time allowed by law;
- 7) that employee's average weekly wage was \$628.90/\$329.42;
- 8) that employer/insurer paid \$105,667.35 in medical expenses and \$101,967.41 of full wages to the employee.

ISSUES

The parties requested this award address the following:

- 1) whether Claimant sustained any disability and if so, the nature and extent of that disability;
- 2) whether the employer/insurer is liable to Claimant for future medical care due to the May 3, 2002 injury;

- 3) whether the employer is entitled to credit pursuant to Missouri Statute §287.270 in the amount of \$105,667.35 of medical expenses and \$101,967.41 of wages paid to Claimant;
- 4) The parties also request whether §287.270 is in violation of Claimant's equal protection, as well as whether the federal law on collective bargaining agreements supersede Missouri Workers' Compensation Statute §287.270.

Central McClellion was under contract for the Kansas City Chiefs football season from March 1, 2002 to February 28/29 of 2004. On May 3, 2002 Claimant sustained a labral tear and fracture of the right hip during a scrimmage.

The employer/insurer sent Claimant to Dr. Mark J. Philippon, who performed surgery of the right hip on September 17, 2002. Although Claimant received partial relief of his symptoms, Claimant was unable to return to his professional football career. Indeed, Claimant could not perform the physical activities of a professional football player due to pain and limitations of his right hip and low back.

Claimant underwent a second surgery of the right lower extremity on June 5, 2007. At that time the authorized treating physician, Dr. Philippon, repaired a recurrent labral tear and noted Grade III chondromalacia of the right hip. Dr. Philippon believes the post-traumatic arthritis of the right hip is related to the scrimmage injury of May 3, 2002.

Claimant also experienced low back pain since the May 2002 injury. MRIs revealed three-level lumbar disk herniations that Dr. Kenneth Jarolem relate to the injury of May 2002.

Presently, Claimant continues to experience pain and limited range of motion of the right hip and low back not experienced prior to May 3, 2002. Claimant also experiences radiating pain into the right lower extremity. Claimant is unable to run, walk or sit for prolonged periods as he did prior to May 3, 2002.

Both Dr. Philippon and Dr. Jarolem find Claimant's current physical condition of the right hip and low back are directly related to the May 3, 2002 injury. I find based on the evidence presented that the May 3, 2002 injury was a substantial contributing factor of Claimant's low back and right hip conditions. Moreover, I find Claimant sustained 20% permanent partial disability of the right hip at the 207 week level and 13% permanent partial disability body as a whole referable to the low back. The employer is liable to Claimant for 93.4 weeks of disability or \$30,767.82.

The employer is also liable to Claimant for future medical care as a result of the May 3, 2002 injury. Indeed, the authorized treating physician, Dr. Philippon, stated Claimant will require future treatment of the right hip in order to cure and relieve the effects of the May 3, 2002 injury.

The parties also request this award address whether the employer/insurer is entitled to credit in the amounts of \$105,667.35 of medical expenses and \$101,967.41 of wages.

Missouri Statute 287.270 states:

“Benefits from other sources no bar to compensation, exception, professional athletes. – No savings or insurance of the injured employee, nor any benefits derived from any other source than the employer or the employer’s insurer for liability under this chapter, shall be considered in determining the compensation due hereunder; except as provided in subsection 3 of section 287.170, and employers of professional athletes under contract shall be entitled to full credit for wages or benefits paid to the employee after the injury including medical, surgical or hospital benefits paid to or for the employee or his dependents on account of the injury, disability, or death, **pursuant to the provisions of the contract.**” (RSMo 1939 § 3712, A.L. 1984 H.B. 1106, A.L. 1998 H.B. 1237, et al.)

Indeed, the guiding language of the statute states to look at the provisions of the NFL contract. As noted above, Claimant was under contract with the Kansas City Chiefs when the injury occurred. The contract signed between Claimant and the Kansas City Chiefs state under paragraph 10 the following:

“any compensation paid to player under this contract or under any collective bargaining agreement in existence during the term of this contract for a period during which he is entitled to workers’ compensation benefits by reason of temporary total, permanent total, temporary partial or permanent partial disability will be deemed an advanced payment of workers’ compensation benefits due player and club will be entitled to be reimbursed the amount of such payment out of any award of workers’ compensation.”

As such, I find that the employer is entitled to be reimbursed for the permanent partial disability and the temporary total or temporary partial disability paid to Claimant as a result of this accident. I do not find the employer/insurer is entitled to credit against medical benefits paid to Claimant since the employment contract with the Kansas City Chiefs states only reimbursement of temporary total, temporary partial, permanent partial or permanent total disability. Therefore, the employer is entitled to credit of permanent partial disability as well as credit at the rate of weekly disability benefit (\$628.90) the employer would have paid during the time Claimant was temporarily disabled.

The parties address various constitutional issues in their briefs such as whether Claimant’s equal protection under the U.S. Constitution was violated and whether the federal law on collective bargaining agreements supersede Missouri Workers’ Compensation Statute 287. Regardless, I do not have jurisdiction to rule on constitutional issues and therefore only address the issues within this Administrative Law Judge’s jurisdiction as set out in Missouri Statute 287.

This award is subject to an attorney’s lien in the amount of 25% for services rendered by Brian Round.

Made by: _____

Lisa Meiners
Administrative Law Judge
Division of Workers' Compensation

This award is dated, attested to and transmitted to the parties this _____ day of _____, 2010, by:

Naomi Pearson
Division of Workers' Compensation