

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

Injury No.: 99-069320

Employee: Ed McCray
Employer: Johnson Controls, Inc.
Insurer: Self c/o Underwriters Safety & Claims
Date of Accident: June 8, 1999
Place and County of Accident: Buchanan 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, as modified, 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 (ALJ) dated September 28, 2004, as modified. The award and decision of Administrative Law Judge R. Michael Mason, issued September 28, 2004, 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.

The Commission affirms the award of the ALJ as to the compensability of the injury and as to the nature and extent of permanent partial disability.

The Commission disagrees with the ALJ on the question of future medical. The parties presented medical evidence on the question of employee's need for future medical aid and treatment to his left knee as the result of this injury of June 8, 1999.

The question in this case is two fold: 1) Will employee require medical treatment in the future; and 2) Is the requirement as a result of the compensable injury?

Both Dr. Smith and Dr. Sandow testify that employee will need future treatment to his left knee including a knee replacement.

It is for the Commission to determine questions regarding medical causation and the relationship of treatment to injury. *Bock v. Broadway Ford Truck Sales, Inc.*, 55 S.W.3d 427 (Mo. App. E.D. 2001).

In this case, Dr. Sandow testified that employee "will need a left total knee replacement at a much younger age than would be expected due to his left knee injury." Dr. Smith testified that "he will probably need a knee replacement" related to the injury he sustained on June 8, 1999.

Accordingly, we find that the evidence compels an award, against the employer and in favor of employee, requiring employer to provide future medical care and treatment to cure and relieve employee from the effects of the injury of June 8, 1999. *Mickey v. City Wide Maintenance*, 996 S.W.2d 144 (Mo. App. W.D. 1999); *Bowers v. Hiland Dairy Company*, 132 S.W.3d 260 (Mo. App. S.D.2004).

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 4th day of April 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD

Employee: Ed McCray Injury No. 99-069320

Employer: Johnson Control

Additional Party:

Insurer: Self-Insured

Hearing Date: September 13, 2004 Checked by: RMM

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: June 8, 1999
5. State location where accident occurred or occupational disease was contracted: Buchanan 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? 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? N/A.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was operating a reed stacker.
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 Knee.

14. Nature and extent of any permanent disability: 10% of the left knee.
15. Compensation paid to-date for temporary disability: \$907.68
16. Value necessary medical aid paid to date by employer/insurer? \$9,668.20
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$529.52
19. Weekly compensation rate: \$353.01 / \$294.73
20. Method wages computation: By Stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:

| | |
|---|-------------|
| weeks of temporary total disability (or temporary partial disability) | |
| 16 weeks of permanent partial disability from Employer | \$ 4,715.68 |
| weeks of disfigurement from Employer | |

Permanent total disability benefits from Employer beginning ___ for claimant's lifetime.

22. Second Injury Fund liability: N/A

| | |
|---|-----------|
| weeks of permanent partial disability from Second Injury Fund | Uninsured |
| medical/death benefits: | |

| | |
|--|------------------|
| Permanent total disability benefits from Second Injury Fund: | |
| ___ weekly differential _____ payable by SIF for ___ weeks beginning _____ | and, thereafter, |
| for claimant's lifetime. | |

TOTAL: \$ 4,715.68

23. Future requirements awarded:

Said payments to begin June 8, 1999 and to be payable and be subject to modification and review as provided by law.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ed McCray Injury No: 99-069320

Dependents: N/A

Employer: Johnson Control

Additional Party:

Insurer: Self-Insured Checked by: RMM

At the commencement of the hearing, the parties stipulated that the only issues to be resolved by the Court were permanent partial disability and liability for future medical.

The evidence presented consisted of live testimony of the employee and Exhibits A, C, D and 1.

FINDINGS OF FACT

The employee had a prior injury to his left knee in 1992. The injury resulted in two

surgeries.

In early 1993, the first surgery was to repair a torn meniscus. Two years later, he had surgery for another tear in the meniscus plus Grade I and II chondromalacia.

In 1995, Dr. Smith felt the claimant was "at a great risk to developing significant arthritis in the knee...".

The present injury occurred June 1999 when the employee twisted his knee at work. He was initially seen by Dr. Cathcart, whose records are not in evidence. On August 23, 1999, he was seen by Dr. Smith. An MRI indicated a complete tear of the ACL. The knee was treated conservatively until surgery in February 2000.

The surgery showed that the ACL was completely normal. No tears or internal derangement was found. The final diagnosis was Grade III and IV chondromalacia, which was treated by debridement. Dr. Smith (Exhibit C, page 4) found a progression of arthritis when he performed the surgery.

Dr. Smith, being honest, gives conflicting testimony about whether a knee replacement will be necessary because of the 1999 accident/injury. The most relevant evidence from his deposition is:

[Page 19, Line 5-14] :

"A. Well, I think it's the adjective "substantial" that is tough, because he had had Grade 2 changes in '95 that progressed to Grade 4 changes by '99. That, in essence, means that it has become full thickness by 1999. I don't know. I think it is an unfortunate answer because I can't tell you that. I don't know when it would have progressed from Grade 4, but from the history that he said that it started in June at that time."

[Page 23, Line 12-23]:

"Q. I'm not asking you for absolute, 100 percent certainty, but I'm asking you for reasonable degree of medical probability. Do you believe that Mr. McCray is going to need a left knee replacement?"

A. Well, the honest answer is probably, because there are no absolutes in this business. He probably will based on the progression of his problems over the multitude of years that I have seen him, and if you extrapolated on a straight line how his knee has progressively worsened, he will probably need a knee replacement."

Dr. Smith rated this injury as 4% of the knee.

Dr. Sandow testified by submission of a rating report. The report lacks credibility as to the portion that states a knee replacement is necessary because of the 1999 injury. He states there was early degeneration joint disease as of June 8, 1999. The records show the early joint disease was diagnosed in 1995 and no one knows what it's condition was on June 8, 1999. Dr. Smith, by arthroscopy, found severe joint disease in February 2000. He says an x-ray of the knee on March 8, 2002 which showed a loss of medial joint compartment height, demonstrated the 1999 injury accelerated the need of a knee replacement. The evidence is that the employee's main complaint when released from the 1992 injury was medial joint problems. There is no prior x-ray to compare with the March 2002 one. The x-ray merely confirms the employee has arthritis in the knee. It cannot reveal how or why it developed.

Dr. Sandow's last supplemental report states that the "left knee injuries" have caused the changed arthritis condition. I note he used the plural "injuries".

Dr. Sandow rated the employee at 17% for this injury.

CONCLUSIONS OF LAW

There has been much discussion during this case as to whether the injury of 1999 was a substantial factor in causing the need for a knee replacement. The word "substantial" is used in the statutes to define when an injury is compensable. It is not a relevant term in this case.

The parties agreed that the employee had a compensable injury. It was first diagnosed as a torn ACL. Later, the diagnosis became chondromalacia grade III and IV. The twisting accident had frayed some of the softened cartilage. Dr. Smith debrided the cartilage.

On July 5, 2000 Dr. Smith is told by the employee that the knee is "real good". The doctor finds no limp. He states the employee "had a worsening of his previous problems with obvious grade IV chondromalacia."

Dr. Smith, who performed the surgery, rated the permanent partial disability due to this injury as 4%. This shows that he felt the injury was minimal and the main problem was arthritis.

Under Section 287.140, the employer is to provide medical treatment as may be reasonably required to cure and relieve the effects of the injury.

I hold that the treatment supplied by Dr. Smith is all that was necessary to cure and relieve the effects of the injury. The damaged tissue was removed. The employee had grade IV chondromalacia at the time of the accident. The arthritic problems stem from the 1992 accident. There is no convincing evidence that the injury in this case has had any effect on the arthritic conditions that may require a knee replacement. The employee had Grade IV chondromalacia prior to the accident and that is the same diagnosis he has following treatment by Dr. Smith. Therefore, I find the knee replacement is not required by the injury in this case and deny any liability for future medical.

I hold the employee has 10% permanent partial disability to the left knee from this accident. I note that he has continued to work on concrete and perform overtime for the last four years. He complains about using stairs and ladders, squatting, and standing on concrete. His complaints are similar to those of any claimant who has had knee surgery. A total disability of 28% to the knee is quite realistic.

Date: September 28, 2004

Made by: /s/ R. Michael Mason
R. Michael Mason
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ Renee Slusher
Renee Slusher, Director
Division of Workers' Compensation